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ARCTIC COASTAL PLAIN COMPETITIVE OIL AND GAS LEASING ACT

MARCH 29, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of March 17 (legislative day, January 3), 1989

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 684]

The Committee on Energy and Natural Resources, having considered the same, reports favorably an original bill, to authorize competitive oil and gas leasing and development on the Coastal Plain of the Arctic National Wildlife Refuge in a manner consistent with protection of the environment, and for other purposes, and recommends that the bill do pass.

The text of the bill follows:

That this Act may be cited as the "Arctic Coastal Plain Competitive Oil and Gas Leasing Act".

TITLE I—STATEMENT OF PURPOSE AND DEFINITIONS

SEC. 101. PURPOSE AND POLICY.—The Congress hereby declares that it is the purpose and policy of this Act—

(a) to authorize competitive oil and gas leasing and development to proceed on the Coastal Plain in a manner consistent with protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users; and

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(b) to provide a new source of funding for: (1) the Land and Water Conservation Fund; (2) the preservation, protection, creation, enhancement, or restoration of wetlands; (3) research, development of commercialization of energy conservation and alternative sources; and (4) for other purposes.

SEC. 102. DEFINITIONS.—When used in this Act—

(a) the term "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980, as referenced in section 1002(b) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142(b)(1) comprising approximately one million five hundred and forty-nine thousand acres; and

(b) the term "Secretary" means the Secretary of the Interior or the Secretary's designee.

TITLE II—CONGRESSIONAL DETERMINATION OF COMPATIBILITY

SEC. 201. CONGRESSIONAL DETERMINATION.—Congress hereby determines that oil and gas activities authorized and conducted on the Coastal Plain pursuant to this Act so as to result in no significant adverse effect on fish and wildlife, their habitat, and the environment, shall be deemed to be compatible with the major purposes for which the Arctic National Wildlife Refuge was established and no further findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act are required to implement this Congressional determination.

TITLE III—COASTAL PLAIN COMPETITIVE LEASING PROGRAM

SEC. 301. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.—(a) The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. Activities pursuant to such program shall be undertaken—

(1) in accordance with the standards for protection of the environment as required by title IV of this Act; and

(2) in a manner to ensure the receipt of fair market value by the public for the mineral resources to be leased.

(b) This Act shall be the sole authority for leasing on the Coastal Plain.

SEC. 302. RULES AND REGULATIONS.—(a) The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this Act, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by title IV of this Act. Such rules and regulations shall be promulgated within nine months after the date of enactment of this Act and shall, as of their effective date, apply to all operations conducted under a lease issued under the provisions of

this Act and all operations on the Coastal Plain related to the exploration, development and production of oil and gas.

(b) In the formulation and promulgation of rules and regulations under this Act, the Secretary shall request and give due consideration to the views of appropriate officials of the State of Alaska and the Government of Canada. The Secretary shall also consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

(c) The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

SEC. 303. ADEQUACY OF DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.—(a) The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142), and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is hereby found by the Congress to be adequate to satisfy the legal requirements under the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this Act prior to conducting the first lease sale.

(b) Except as provided in subsection (a) of this section, nothing in this Act shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by this Act, nor shall anything in this Act be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

SEC. 304. LEASE SALES.—(a) Lands may be leased pursuant to the provisions of this Act to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion from, a lease sale;

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale;

(3) review by the State of Alaska and local governments in Alaska which may be impacted by the proposed leasing; and

(4) periodic consultation with the State of Alaska and local governments in Alaska, oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain including those involved in subsistence uses and recreational activities.

(c) The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they

shall occur after the nomination process provided for in subsection (b) of this section. For the first lease sale, the Secretary shall, consistent with the requirements set forth in title IV of this Act, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of three hundred thousand acres. If the total acreage nominated is less than three hundred thousand acres, he shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. Thereafter, no more than three hundred thousand acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held thirty-six months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

(d) Areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives ninety days in advance of excluding any such areas from leasing. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c) of this section, offer such lands for leasing.

SEC. 305. GRANT OF LEASES BY THE SECRETARY.—(a) The Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The royalty shall be fixed in the lease and shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

(b) The Secretary shall not accept a bid for a lease if the Secretary finds, after notice and hearing, that the bidder is not meeting diligent development requirements on any other Federal mineral lease.

(c) ANTITRUST REVIEW.—(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review

pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if he makes specific findings that approval of the lease is necessary to carry out the purposes of the Act, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, he must notify the lessee and the Attorney General of his findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(d) SECRETARY'S APPROVAL FOR SALE, EXCHANGE, ASSIGNMENT, OR OTHER TRANSFER OF LEASES.—No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

(e) NO ANTITRUST IMMUNITY OR DEFENSES.—Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f) DEFINITIONS.—As used in this section—

(1) "antitrust review" shall be deemed an "antitrust investigation" for the purpose of the Antitrust Civil Process Act (15 U.S.C. 1311).

(2) "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

SEC. 306. LEASE TERMS AND CONDITIONS.—An oil and gas lease issued pursuant to this section shall—

(a) be for a tract consisting of a compact area not to exceed two thousand five hundred and sixty acres;

(b) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(c) require the payment of royalty as provided for in section 305 of this Act;

(d) require approval of an exploration plan, as provided for in section 307 of this Act;

(e) require approval of a development and production plan, as required in section 307 of this Act;

(f) require posting of bond required by section 308 of this Act;

(g) provide for the suspension of the lease during the initial lease term or thereafter pursuant to section 309 of this Act;

(h) provide for the cancellation of the lease during the initial lease term or thereafter pursuant to section 310 of this Act;

(i) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by title IV of this Act;

(j) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(k) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this Act and the regulations issued thereunder.

SEC. 307. EXPLORATION AND DEVELOPMENT AND PRODUCTION PLANS.—(a) EXPLORATION PLANS.—All exploration activities pursuant to any lease issued or maintained under this Act shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act and other applicable law.

(b) OIL AND GAS DEVELOPMENT AND PRODUCTION PLANS.—All development and production pursuant to a lease issued or maintained pursuant to this Act shall be conducted in accordance with an approved development and production plan. Prior to commencing development or production pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit a development and production plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act and other applicable law.

(c) REQUIREMENTS APPLICABLE TO EXPLORATION PLANS AND DEVELOPMENT AND PRODUCTION PLANS.—Exploration plans and development and production plans shall include where applicable—

(1) the names and legal addresses of the following persons: the operator, contractors, subcontractors and the owners or lessees other than the operator;

(2) a map or maps showing—

(A) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that point, existing and proposed access routes or roads within the area, the boundaries of

proposed surface disturbance and location of all survey lines;

(B) the location of proposed drilling sites, wellsite layout, and all surface facilities;

(C) sources of construction materials within the area including but not limited to gravel; and

(D) the location of ancillary facilities including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(3) a description of—

(A) all surface and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips; and

(B) the major equipment to be used in the operations, including but not limited to equipment and methods for the transport of all waters used in or produced by operations, and of the proposed method of transporting such equipment within the area covered by the plan of operations including to and from the site;

(4) an estimated schedule for any phase of operations of which review by the Secretary is sought and the anticipated date of operation completion;

(5) the nature and extent of proposed operations;

(6) plans for reclamation, including:

(A) the anticipated reclamation work to be performed;

(B) a proposed schedule of reclamation activities to be performed; and

(C) a detailed estimate of reclamation costs;

(7) methods for disposal of all wastes and hazardous and toxic substances;

(8) an affidavit stating that the operations planned will be in compliance with all applicable Federal, State, and local laws and regulations;

(9) contingency plans in case of spills, leaks, or other accidents; and

(10) such additional information as may be required by the Secretary to ensure that the proposed activities are consistent with this Act, as well as other applicable Federal and State environmental laws.

(d) PROCEDURES FOR PLAN APPROVAL.—(1) After an exploration or development and production plan is submitted for approval, the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the Federal Register and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment.

(2) Within one hundred and twenty days after receiving an exploration or development and production plan, the Secretary shall determine, after taking into account any comment received under paragraph (1) of this subsection, whether the activities proposed in the plan are consistent with this Act and other applicable provi-

sions of Federal and State law. If that determination is in the affirmative, the Secretary shall return the plan along with a statement of any modifications necessary for its approval. The Secretary, as a condition of approving any plan under this section—

(A) may require modifications to the plan that he considers necessary or appropriate to make it consistent with this Act and other applicable law. The Secretary shall assess reasonable fees or charges for the reimbursement of all necessary and reasonable research, administrative, monitoring, enforcement, and reporting costs associated with reviewing the plan and monitoring its implementation; and

(B) shall require such periodic reports regarding the carrying out of the drilling and related activities as may be necessary or appropriate for purposes of determining the extent to which the plan is being complied with and the effectiveness of the plan in ensuring that the drilling and related activities are consistent with this Act and other applicable provisions of Federal and State law.

(e) MODIFICATION OF PLANS.—If at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish on wildlife, their habitat, or the environment, the Secretary, after consultation with the lessee shall—

(1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect;

(2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or

(3) terminate and cancel the plan where actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

SEC. 308. BONDING REQUIREMENTS.—(a) REQUIREMENT FOR PERFORMANCE BOND.—After approval of an exploration or development and production plan, the lessee shall be required to file with the Secretary a suitable performance bond. The bond shall be conditioned upon compliance with all the terms and conditions of the lease and all applicable laws. Such performance bond is in addition to and not in lieu of any bond or security deposit required by other regulatory authorities or required by any other provision of law. The lessee may file either a surety bond, or a personal bond consisting of cash or negotiable Treasury bonds of the United States. When negotiable Treasury bonds serve as the personal bond, they shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of a default in the performance of the terms and conditions of the lease.

(b) AMOUNT OF PERFORMANCE BOND.—The performance bond shall be in an amount—

(1) to be determined by the Secretary to provide for reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(2) an amount set by the Secretary, consistent with the type of operations proposed, to provide the means for rapid and ef-

fective cleanup, and to minimize damages resulting from an oil spill, the escape of gas, refuse, domestic wastewater, hazardous or toxic substances, or fire caused by oil and gas activities.

(c) ADJUSTMENT OF BOND TO CONFORM TO REVISED PLAN.—In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond to conform to such modified plan.

(d) DURATION OF BOND.—The responsibility and liability of the lessee and its surety under the bond or security deposit shall continue until such time as the Secretary, after consultation with affected Federal and State agencies, determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) TERMINATION OF LIABILITY.—Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary shall notify the lessee that the period of liability under the bond or security deposit has been terminated.

SEC. 309. LEASE SUSPENSION.—The Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this Act: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat or the environment. If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

SEC. 310. LEASE CANCELLATION.—(a) CANCELLATION OF NONPRODUCING LEASE.—Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this Act, such lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

(b) CANCELLATION OF PRODUCING LEASE.—Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this Act, such lease may be forfeited and cancelled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under the provisions of this Act.

(c) ADDITIONAL PROVISIONS.—(1) In addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that—

(A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; and

(B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time.

(2) Such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

(3) Cancellation under this subsection shall entitle the lessee to receive such compensation as the lessee demonstrates to the Secretary to be equal to the lesser of (A) the fair market value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including the costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill or spill of other hazardous or toxic materials, fines, damages, penalties, or removal costs assessed pursuant to section 315 of this Act or other State or Federal environmental law, any fees paid pursuant to section 503 of this Act, and all other costs reasonably anticipated on the lease; or (B) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee (exclusive of any fines, damages, penalties, or removal costs assessed pursuant to section 315 of this Act or other State or Federal environmental law, and any fees paid pursuant to section 503 of this Act) after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement).

SEC. 311. ASSIGNMENT OR SUBLETTING OF LEASES.—No lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary.

SEC. 312. RELINQUISHMENT.—The lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this Act. The Secretary shall accept the relinquishment by the lessee of any lease issued under this Act where there has not been surface disturbance on the lands covered by the lease.

SEC. 313. UNITIZATION.—For the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is also authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

SEC. 314. OIL AND GAS INFORMATION.—(a)(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access

to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If interpreted information provided pursuant to paragraph (1) of this subsection is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such interpreted information.

(3) Whenever any data or information is provided to the Secretary, pursuant to paragraph (1) of this subsection—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) The Secretary shall prescribe regulations to: (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained; and (2) set forth the time periods and conditions which shall be applicable to the release of such information.

SEC. 315. REMEDIES AND PENALTIES.—(a) GENERAL.—Except as provided in section 316 of this Act, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under this Act. Proceedings may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located.

(b) ACTIONS FOR RELIEF.—At the request of the Secretary, the Attorney General or a United States Attorney shall institute a civil action in the district court of the United States for the district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located, for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease issued pursuant to this Act.

(c) CIVIL PENALTIES.—If any person fails to comply with any provision of this Act, or any term of a lease issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of such failure. The Secretary may assess, collect and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(d) CRIMINAL PENALTIES.—Any person who knowingly and willfully—

(1) violates any provision of this Act, any term of a lease issued pursuant to this Act, or any regulation or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources;

(2) makes any false statement, representation, or certification in any application, record, report or other document filed or required to be maintained under this Act;

(3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act; or

(4) reveals any data or information required to be kept confidential by this Act,

shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(e) LIABILITY OF CORPORATE OFFICERS AND AGENTS FOR VIOLATIONS BY CORPORATION.—Whenever a corporation or other entity is subject to prosecution under subsection (d) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (d) of this section.

(f) CONCURRENT AND CUMULATIVE NATURE OF PENALTIES.—The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(g) REMOVAL COSTS AND LIABILITY FOR DAMAGES.—Notwithstanding any other provision of law, if any area of the Coastal Plain or adjacent State waters has been or is being polluted by discharges of oil or hazardous or toxic substances from exploration, development, or production of oil or gas or related activities, conducted by, or on behalf of, a responsible party, and if the pollution has damaged or is damaging fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters, or if such pollution is causing a substantial threat of damaging those fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters, the responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in this subsection that arise directly out of or directly result from pollution that has damaged, or is damaging or is causing a substantial threat of damaging fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters. The Secretary shall make a determination with respect to such liability after notice to the responsible party and an opportunity for hearing. Upon failure of the responsible party adequately to control and remove the pollutant or threat, the Secretary, in cooperation with other Federal, State, or local agencies or in cooperation with the responsible party, or both, shall have the right to accomplish the control and removal at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation Fund, provided for by section 503 of this Act, may be used to accomplish such control and removal until such time as sufficient funds can be

recovered from the responsible party. The removal costs and damages referred to in this subsection are the following—

(1) all necessary removal costs as determined by the Secretary;

(2) damages for injury to, destruction of, loss of, and reclamation of natural resources, including the reasonable costs of assessing such injury, destruction, loss or reclamation; and

(3) damages for economic loss resulting from injury to, or destruction of, real or personal property or natural resources, and loss of subsistence use of natural resources by local residents.

SEC. 316. JUDICIAL REVIEW.—Any complaint filed seeking judicial review of an action of the Secretary in promulgating any regulation under this Act may be filed only in the United States Court of Appeals for the District of Columbia, and such complaint shall be filed within ninety days from the date of such promulgation, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Any complaint seeking judicial review of any other actions of the Secretary under this Act may be filed in any appropriate district court of the United States, and such complaint must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint.

SEC. 317. ANNUAL REPORT TO CONGRESS.—On March 1st of each year following the date of enactment of this Act, the Secretary shall prepare and submit to the Congress an annual report on the leasing program authorized by this Act.

SEC. 318. INTERESTS OF THE INUPIAT ESKIMO PEOPLE.—(a) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are hereby repealed.

(b) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Coastal Plain are hereby repealed as of the day after the first lease sale is held pursuant to this Act. With respect to the lands and interests therein described in this subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

(c) The substantive provisions of the final regulations issued pursuant to this Act which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain shall apply to the exploration and development of all subsurface property interests owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge: *Provided,* That prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection (a), shall be

governed by the stipulations set forth in Appendix 2 of the August 9, 1983 agreement between the Arctic Slope Regional Corporation and the United States.

(d) Any claims for money damages or other available relief brought by Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of this Act constitute a taking of contract or property rights under the Fifth Amendment to the Constitution of the United States may be brought within one hundred and twenty days of its enactment. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceedings in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any claim whether in a proceeding instituted prior to or on or after the date of enactment of this Act. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

TITLE IV—COASTAL PLAIN ENVIRONMENTAL PROTECTION

SEC. 401. (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—The Secretary shall administer the provisions of this Act through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, and that shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations.

(b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a mitigation plan be implemented to avoid, minimize and compensate (in that order and to the extent practicable) any significant adverse effect assessed under paragraph (1) of this subsection; and

(3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

SEC. 402. REGULATIONS TO PROTECT THE COASTAL PLAIN'S FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS AND THE ENVIRONMENT.—(a) Prior to implementing the leasing program authorized

by title III of this Act, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by this Act are conducted in a manner consistent with the purposes and environmental requirements of this Act.

(b) The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by title III of this Act shall require compliance with all applicable provisions of Federal and State environmental law and shall also require—

(1) as a minimum, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods: *Provided,* That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction standards for all pipelines and any access and service roads that—

(A) minimize adverse effects upon the passage of migratory species such as caribou to the maximum extent possible; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) prohibitions on public access and use on all pipeline access and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this Act, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: *Provided,* That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river systems; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(c) In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider:

(1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31–33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft agreement between Koniag, Incorporated and the United States of America on file with the Secretary on December 1, 1987.

SEC. 403. (a) SADLEROCHIT SPRING SPECIAL AREA.—(1) The Sadlerochit Spring Special Area, comprising approximately four thousand acres as depicted on the map referenced in section 102 of this Act, is hereby designated to be a special area. Such special area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(2) Pursuant to subsection (d) of section 304 of this Act, the Secretary may exclude the Sadlerochit Spring Special Area from leasing.

(3) In the event that the Secretary leases the Sadlerochit Spring Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(b) DESIGNATION OF OTHER SPECIAL AREAS.—The Secretary is authorized to designate other areas of the Coastal Plain as Special Areas if the Secretary determines that they are of unique character and interest so as to require such special protection. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of the Secretary's intent to designate such areas ninety days in advance of making such designations. Any such areas designated as special areas shall be managed in accordance with the standards set forth in subsection (a) of this section.

SEC. 404. FACILITY CONSOLIDATION PLANNING.—(a) The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. This plan shall have the following objectives—

(1) avoiding unnecessary duplication of facilities and activities;

(2) encouraging consolidation of common facilities and activities;

(3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;

(4) utilizing existing facilities wherever practicable; and

(5) enhancing compatibility between wildlife values and development activities.

(b) The plan prepared under this section shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2394).

SEC. 405. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.—Notwithstanding title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.), the Secretary is authorized to grant under section 28 of the Mineral Leasing Act (30 U.S.C. 185) rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued pursuant to this Act shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

SEC. 406. ENVIRONMENTAL STUDIES.—In addition to any other environmental studies required by law, subsequent to exploring or developing any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary, and shall monitor the human, marine, and coastal environments of such area or region in a

manner designed to provide information which can be used for comparison with any previously-collected data for the purpose of identifying any effects on the fish or wildlife and their habitat and any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such effects or changes.

SEC. 407. ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS.—(a) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this Act.

(b) RESPONSIBILITIES OF HOLDERS OF LEASE.—It shall be the responsibility of any holder of a lease under this Act to—

(1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, and the environment of, the Coastal Plain; and

(2) allow prompt access at the site of any operations subject to regulation under this Act to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) ONSITE INSPECTION OF FACILITIES.—The Secretary shall promulgate regulations to provide for—

(1) scheduled onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this Act or such provisions contained in any lease issued pursuant to this Act to assure compliance with such environmental or safety regulations; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

SEC. 408. FUNDING FOR ENVIRONMENTAL MONITORING AND ENFORCEMENT.—The Congress authorizes and directs the Secretary of the Treasury to make available to the Administrator of the Environmental Protection Agency (Administrator) an amount of $5,000,000, not later than sixty days after the first lease sale pursuant to section 304 and annually thereafter, until ten years after oil and gas exploration, production and development activities on the Coastal Plain have ceased. The Administrator shall distribute annually to the State of Alaska not less than 25 per centum of such amount. These money shall be used for activities, or in support of activities, within the State of Alaska by the Environmental Protection Agency and the State of Alaska for monitoring compliance with, and enforcing, all Federal environmental laws within their jurisdiction applicable to oil and gas exploration, development and production under this Act, and monitoring compliance with, and enforcing, all such laws, with respect to owners, operators, and other persons having business in connection with leases granted pursuant to this Act. For purposes of this section, all such Federal environmental laws shall include, but are not limited to, the Clean

Air Act (42 U.S.C. 7401-7642), the Solid Waste Disposal Act (42 U.S.C. 6901-6987); the Federal Water Pollution Control Act (33 U.S.C. 1251-1376); the Comprehensive Environmental Response, Compensation, and Liability Act (26 U.S.C. 4611 et. seq. and 42 U.S.C. 9601-9675); and the Safe Drinking Water Act (42 U.S.C. 300f-300j-9). The Administrator and the State of Alaska shall enter into a cooperative agreement to coordinate their responsibilities under this section. The Administrator shall consult with the United States Department of Transportation and the State of Alaska on the appropriate role of the State of Alaska in monitoring and enforcing the Hazardous Materials Transportation Act (49 U.S.C. app. 1801-1814). The Administrator shall submit annually a report to the Congress on the amount of funds expended and activities carried out pursuant to this section.

TITLE V—LAND RECLAMATION AND RECLAMATION LIABILITY FUND

SEC. 501. LAND RECLAMATION.—The holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease holder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

SEC. 502. STANDARD TO GOVERN LAND RECLAMATION.—The standard to govern the reclamation of lands required to be reclaimed under this Act, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

SEC. 503. COASTAL PLAIN LIABILITY AND RECLAMATION FUND.—(a) Within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund") is hereby directed to be established by the Secretary.

(b) The Secretary shall collect from the owner of any commercially produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil first enters the trans-Alaska pipeline a fee of 5 cents per barrel. The collection of the fee

shall cease when $50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below $45,000,000.

(c) All revenues collected under subsection (b) shall be paid into the Reclamation Fund. The reasonable costs of administration of the Reclamation Fund shall be paid from the revenues in the Reclamation Fund. All sums not needed for administration of the Reclamation Fund or making authorized payments out of the Fund shall be invested prudently by the Secretary in income-producing securities. Income from such securities shall be added to the principal of the Reclamation Fund.

(d) The revenues in the Reclamation Fund shall be available, with the approval of the Secretary, for the following purposes:

(1) to compensate promptly any person or entity, public or private, for any damages caused by oil and gas exploration, development and production activities on or in the vicinity of the Coastal Plain;

(2) to reclaim any area of the Coastal Plain not reclaimed in accordance with the standard set forth in section 502 of this Act, by the operator or the holder of a lease or leases;

(3) up to $15,000,000 annually to reclaim and restore—

(A) any area of the Arctic National Wildlife Refuge or other North Slope Federal lands affected by past or future oil and gas exploration, development, or production; and

(B) North Slope non-Federal lands affected by future exploration, development, or production on the Coastal Plain,

which are not reclaimed and restored in accordance with applicable Federal and State law;

(4) up to $2,000,000 annually to the Director of the Fish and Wildlife Service to monitor and conduct research on fish and wildlife species which utilize the land and water resources of the Coastal Plain; and

(5) to reclaim at the conclusion of the period of exploration, development and production, any area of the Coastal Plain and related lands which have not been properly reclaimed by the operator or lease holder.

(e) The United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover any funds expended under paragraphs (1), (2), (3) and (5) of this subsection due to a failure by the responsible party to reclaim such area as required by this Act: *Provided,* That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

(f) Any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the Migratory Bird Conservation Fund.

TITLE VI—DISPOSITION OF OIL AND GAS REVENUES

SEC. 601. DISTRIBUTION OF REVENUES.—Notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees, interest charges or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, Alaska shall be distributed as follows:

(a) 50 per centum to the State of Alaska;

(b) 20 per centum deposited into the Land and Water Conservation Fund;

(c) 15 per centum deposited into a special account in the Treasury to be used in accordance with the provisions of section 603 for the preservation, protection, creation, enhancement, or restoration of wetlands in the United States;

(d) 10 per centum to miscellaneous receipts in the Treasury; and

(e) 5 per centum to be used by the Secretary of Energy for funding research, development, and commercialization of energy conservation and alternative sources authorized in section 704.

SEC. 602. LAND AND WATER CONSERVATION FUND.—(a)(1) Moneys deposited into the Land and Water Conservation Fund ("the Fund") pursuant to section 601 shall be credited to a special account within the Fund. In addition, beginning the first full fiscal year after funds are credited to the special account, there shall also be credited to the special account an amount equal to the average annual appropriation from the Fund for the five years preceding the date of the initial crediting of funds pursuant to section 601(b). These funds shall be derived from those moneys comprising the authorized but unappropriated balance of the Fund.

(2) Not more than 25 per centum of the funds deposited into the special account shall be available for State purposes pursuant to section 6 of the Land and Water Conservation Fund Act (16 U.S.C. 460l–8). The balance of the funds in the special account shall be available, without further appropriation, for Federal purposes as provided in section 7 of that Act (16 U.S.C. 460l–9) and shall be allocated in accordance with this section.

(b)(1) At the time of the submission of the President's budget, each Federal land managing agency eligible to receive moneys from the Fund shall provide the Congress with a list, in descending order or priority, of land acquisition projects which have been authorized by law (hereinafter in this section referred to as the "priority list").

(2) The priority lists shall be prepared by the Directors of the Bureau of Land Management, National Park Service, Fish and Wildlife Service, Department of the Interior, and the Chief of the Forest Service, United States Department of Agriculture, and shall reflect their best professional judgment regarding the land acquisition priorities of such bureau or agency.

(3) In preparing such lists the following factors shall be considered: the amount of money anticipated to be made available in any one year; the availability of land appraisal and other information necessary to complete the acquisition in a timely manner; the po-

tential adverse impacts on the park, wilderness, wildlife refuge or other such unit which might result if the acquisition is not undertaken; and such other factors as the land managers deem appropriate.

(c)(1) Except as provided in subsection (d) funds shall be allocated from the special account in accordance with the priority lists submitted pursuant to this section unless such lists are modified by law.

(2) The Secretary of the Treasury shall notify the Congress on an annual basis as to the amounts available for allocation within the special account.

(3) If the priority lists are modified by law, such law shall ensure that each Federal land managing agency shall receive a fair and equitable share in accordance with land acquisition needs, congressional directives, and historical patterns of distribution of the fund: *Provided,* That no agency shall receive more than 50 per centum of the funds available from the special account in any one year.

(d) Unless priority lists are modified by law, the Secretary of the Treasury is authorized and directed, beginning one year after the lists are submitted pursuant to paragraph (b)(1), to make funds from the special account directly available to the land managing agencies to be used solely for land acquisition projects on the respective priority lists in accordance with the following formula:

(1) 45 per centum to the Fish and Wildlife Service;

(2) 40 per centum to the National Park Service;

(3) 10 per centum to the Forest Service; and

(4) 5 per centum to the Bureau of Land Management.

SEC. 603. SPECIAL WETLANDS PROTECTION ACCOUNT.—(a) Those funds allocated for wetland protection purposes pursuant to subsection 601(c) shall be credited to a special wetlands protection account ("Wetlands Account") in the Treasury of the United States. Such funds shall be available, without further appropriation, for expenditure solely in accordance with the provisions of this section. Any funds deposited into the Wetlands Account shall remain available until expended.

(b)(1) Within thirty days after the date funds are first credited to the Wetlands Account pursuant to subsection (a), the Secretary, in conjunction and consultation with the Secretary of the Army acting through the Chief of the Corps of Engineers, the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency shall initiate a process to identify and prepare a list of high priority projects to preserve, protect, enhance, restore, or create wetlands in the United States.

(2) To assist in the preparation of the list, the Secretary of the Treasury shall make funds available from the Wetlands Account to the Secretary to prepare preliminary assessments; general and site specific inventories; reconnaissance, engineering, or other studies; preliminary design work; and such other studies as may be necessary to identify such projects.

(3) Such funds as are necessary for these purposes, but not to exceed $10,000,000 annually, shall be allocated by the Secretary to the Federal agencies identified in paragraph (b)(1) (including the Department of the Interior) based on the need for such funds and such other factors as the Secretary, in consultation with the other

agencies, deems appropriate to carry out the purposes of this subsection.

(c)(1) As soon as practicable after funds are made available pursuant to subsection (b), the Secretary shall compile and transmit the list of priority projects to the Congress. Thereafter, the list shall be transmitted to the Congress annually as part of the President's budget submission. Such transmittal shall also include a statement from the Secretary of the Treasury indicating the amount available for expenditure from the Wetlands Account.

(2) The list shall include, but not be limited to, the following:

(A) identification, by map or other means, of the wetland area to be covered by the project; and

(B) a detailed description of the proposed project including a justification for including such project on the list, the proposed activities to be carried out pursuant to the project, the benefits to be realized by such project, the identification of a lead agency to undertake the proposed project, an estimated timetable for the completion of project, and the estimated cost of the project.

(3) Where such a determination is required under applicable law, benefits of projects on the list are deemed to be at least equal to the costs associated with such projects.

(4) In preparing the list, special consideration shall be given to the inclusion of projects affecting wetland areas, including but not limited to coastal wetland areas, having particularly high value as fish and wildlife habitat, for purposes of flood or pollution control and which are, or are likely to be, subject to erosion, conversion or other degradation.

(d) Except as provided in subsection (b), funds from the Wetlands Account shall be allocated in accordance with the list submitted pursuant to this section unless such list is modified by law.

(e) Unless the list is modified by law, the Secretary of the Treasury is authorized and directed, beginning one year after the list is transmitted pursuant to paragraph (c)(1), to make funds from the Wetlands Account directly available to the head of the appropriate agency for the purpose of carrying out projects as identified on the list.

(f) As used in this section, the term "project" means a complete project or, where applicable, individual phases, portions, or components thereof.

SEC. 604. JUDICIAL REVIEW AND NON-SEVERABILITY.—(a) Notwithstanding the provisions of section 316 of this Act, any legal action, including an action for declaratory judgment, to challenge the determination made in section 601(a) of this Act of the State of Alaska's share of oil and gas revenues shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court. Any such action shall be brought within ninety days of enactment of this Act in an appropriate United States district court. Such action shall be barred unless a complaint is filed within the time specified. Any review of an interlocutory or final judgment, decree, or order of the United States district court in

such action may be had only upon direct appeal to the Supreme Court of the United States.

(b) Nothing in this section shall be construed to grant causes of action to any person or to waive any defenses which may be available to the United States.

(c) If any action is brought in accordance with subsection (a), no lease sale shall occur under section 304 of this Act until a final nonappealable decision has been issued in any such action.

(d) If the revenue sharing provision of section 601(a) of this Act is held invalid, the remainder of this Act shall be void.

TITLE VII—ENERGY PLAN

SEC. 701. ENERGY PLAN.—(a)(1) Not later than fifteen months after the date of enactment of this Act, the Secretary of Energy, with the advice and assistance of the Chairman of the Council on Environmental Quality, the Secretary and the National Academy of Sciences, shall prepare and transmit to the Congress an energy plan which shall include, among other things, a proposed statement of national energy policy objectives.

(2) The plan shall focus on the total projected demand in the United States for energy and for crude oil and petroleum products, in particular, over the estimated period of potential production from the Coastal Plain (approximately through the year 2030). The plan also shall include a range of likely scenarios for crude oil and petroleum products demand and a description of alternative sources of supply, including imported crude oil and petroleum products, likely to be available to meet such demand.

(3) The information contained in the energy plan shall include, but not be limited to—

(A) a projection of the Nation's demand for energy and for crude oil and petroleum products, in particular, in each sector of the domestic economy—transportation, industrial (including chemicals, feedstocks, and byproducts), residential/commercial, and electric utility;

(B) an estimate of the potentially available supply of crude oil and petroleum products—

(i) produced from domestic sources; and

(ii) imported from foreign sources;

(C) an estimate of—

(i) the potentially available supply of crude oil and natural gas from the Arctic region of Alaska (including Prudhoe Bay and adjacent fields) to be derived in part from the study required under section 702, and

(ii) the costs of exploration, development, mitigation and reclamation;

(D) an estimate of the potential in-place and economically recoverable reserves of crude oil and natural gas in the Coastal Plain, utilizing the geologic information gathered for the report required by section 1002(h) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3142(h)) and other available information;

(E) an estimate of projected world crude oil prices and economic conditions with specified operative assumptions;

(F) an identification of alternative energy sources of supply that are or may be commercially available to substitute for part of the estimated requirements for crude oil and petroleum products under subsection (a)(2);

(G) an identification, a projection and an estimate of the status and role of each of the following energy sources in meeting projected national energy requirements generally and in providing substitutes for crude oil and petroleum products under the demand projection associated with the scenarios provided for in subsection (a)(2)—

(i) coal, including clean coal technologies and underground coal gasification;

(ii) energy conservation, including research and development;

(iii) improvements and technological gains in electrical energy generation and transmission;

(iv) other alternative energy sources such as renewable resources, solar, geothermal, and hydroelectric power; and

(v) improvements in the extraction of energy resources such as oil and natural gas.

(H) an identification of technologies and programs available and their cost of implementation for increasing the efficiency in energy extraction and use, including transportation uses.

(b) POTENTIAL ALTERNATIVES TO MEET DEMAND PROJECTIONS.—The range of demand scenarios under subsection (a) shall identify and evaluate all potential and realistic alternative energy resources available to meet the range of demand scenarios on a consistent basis. The alternative energy resources shall include, but shall not be limited to—

(1) increased efficiency in the use of crude oil and petroleum products through higher fuel efficiency standards, including the identification of any social, environmental and technology conversion costs associated with the implementation of such standards;

(2) use of substitutes for petroleum products in the transportation sector such as methanol, ethanol, natural gas, and hydrogen, including the identification of research, development, demonstration, production and any environmental technology conversion costs for the use of such substitutes;

(3) producing crude oil and natural gas from the Coastal Plain, including the identification of exploration, development, mitigation, and reclamation costs; and

(4) importing crude oil from foreign sources, including the identification of risks and potential costs of disruption in supply and a range of assumptions concerning the national security risks and potential social and economic costs of cartel imposed supply levels and prices.

(c) RECOMMENDATIONS.—(1) The energy plan shall include a ranking of all potential and realistic alternatives identified under subsection (b). The plan shall identify the most reliable mix of alternatives from the standpoint of national security, consumer costs, impact on the environment, and least regulatory interference with the marketplace. The plan also shall provide recommendations to the Congress concerning the implementation of such alternative or

alternatives. Such recommendations shall include any changes in existing laws or regulations or new statutory authority necessary to implement the recommendations contained in the plan, as well as proposed changes in energy research and development priorities and funding.

(2) In developing such recommendations, the Secretary of Energy shall give special consideration to measures which—

(A) reduce energy costs to consumers;

(B) enhance reliability of energy supplies and national security;

(C) utilize proven or demonstrated technologies;

(D) increase the efficient use of nonrenewable resources such as coal, crude oil and petroleum products;

(E) have the least potential social costs and adverse impacts on the environment;

(F) minimize the long-term subsidization of alternatives through tax or other Federal aid programs;

(G) enhance the diversification of the Nation's domestic energy supply; and

(H) minimize or reduce reliance on imported oil over the supply-demand period under study.

SEC. 702. OIL AND GAS POTENTIAL DEVELOPMENT IN THE ARCTIC REGIONS OF ALASKA.—(a) The Secretary of the Interior, to accompany the energy plan required under section 701, shall prepare a study of present and projected oil and gas developments in the Arctic region of Alaska, both onshore and offshore, excluding all portions of the Arctic National Wildlife Refuge which are—

(1) not held in private ownership; or

(2) contained in the Coastal Plain study area.

(b) The study shall include an identification of—

(1) those areas which qualified geologists rate as prospective for hydrocarbon accumulation;

(2) those areas where seismic work and exploration has taken place and the available results;

(3) those areas where seismic work and exploration are projected to occur in the future; and

(4) those areas where exploratory and production drilling has demonstrated the presence of oil or natural gas, regardless whether commercially recoverable quantities of oil or gas were demonstrated.

(c) The study shall include the projected quantities of oil or natural gas that are or may be recoverable from the Arctic region under a range of world oil prices and economic conditions.

(d) The study shall include an examination of the infrastructure needed, beyond what is already in place at Prudhoe Bay, in the trans-Alaska pipeline and the port and marine facilities at Valdez, to develop the oil and gas resources of the Arctic region under a range of development scenarios.

SEC. 703. TRANSMITTAL OF THE ENERGY PLAN AND OTHER STUDIES TO THE CONGRESS.—(a) The energy plan and other studies developed by the Secretary and the Secretary of Energy pursuant to this title shall be transmitted to the Committee on Energy and Natural Resources of the Senate and the respective jurisdictional committees

of the House of Representatives no later than fifteen months after the date of enactment of this Act.

(b) The Secretary shall not conduct the first lease sales authorized under title III and section 304 of this Act until twenty-one months after the date of enactment of this Act to permit adequate time for review and for action, if any, by the Congress on implementing the energy plan and studies authorized and directed under this title.

(c) The Secretary is authorized and directed to proceed with the development and implementation of final regulations to carry out the purposes of this Act, in accordance with the provisions of this Act, during the twenty-one month period required to develop and review the energy plan and studies required by this title.

SEC. 704. ENERGY CONSERVATION AND ALTERNATIVE ENERGY RESEARCH AND DEMONSTRATION PROGRAMS.—(a) Pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Secretary of Energy is authorized and directed to establish an energy research and demonstration grant program to promote and advance research, development, and commercialization in the areas of energy conservation and alternative energy sources. The energy research and demonstration grant program shall be funded out of revenues received under section 601(e).

(b) The energy research and demonstration grant program authorized by this section shall have as its major purpose the development of energy conservation and alternative energy technologies which have the capacity to significantly reduce the Nation's growing reliance on imported oil by the end of the century.

TITLE VIII—EXPORT RESTRICTIONS

SEC. 801. CRUDE OIL EXPORT RESTRICTIONS.—(a) Notwithstanding any other provision of law, no crude oil produced from lands in the Coastal Plain (except any such crude oil which (1) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in subsection (b)(1)(B) of this section, (2) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (3) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of fifty thousand barrels per day, in addition to exports under paragraphs (1) and (2), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to subsection (b) of this section.

(b) Crude oil subject to the prohibition contained in subsection (a) may be exported only if—

(1) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(A) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(B) will, within three months following the initiation of such exports or exchanges, result in (i) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (ii) not less than 75 per centum of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(C) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(D) are clearly necessary to protect the national interest; and

(E) are in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. app. 2401 and following); and

(2) the President includes such findings in his recommendation to the Congress and the Congress, within sixty days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(c) Notwithstanding any other provision of this section or any other provision of law, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

Purpose of the Measure

The purpose of this measure is to authorize and direct the Secretary of the Interior of establish and implement a competitive oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge, Alaska, which will result in the exploration, development, and production of oil and gas reserves in a manner consistent with the protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users.

Background and Need

The Arctic National Wildlife Refuge (ANWR), in the northeastern corner of Alaska, was first established as the Arctic National Wildlife Range by Public Land Order 2214 in 1960, for the purposes of preserving unique wildlife, wilderness, and recreational values. The order withdrew the original 8.9 million acre range from all forms of appropriation under the public land laws, including mining laws but excluding the mineral leasing laws. This order culminated extensive efforts begun more than a decade earlier to preserve this unique part of Alaska.

The Alaska National Interest Lands Conservation Act (ANILCA), passed in 1980, established or enlarged 16 National Wildlife Refuges in Alaska, among them the 19 million acre Arctic National Wildlife Refuge. Today ANWR encompasses the original 8.9 million acre wildlife range and approximately 10 million additional acres of adjoining lands west toward the Trans-Alaska Pipeline System (TAPS) and south of the Yukon Flats National Wildlife Refuge. Approximately 8 million acres of ANWR, comprising most of the original Arctic National Wildlife Refuge, was designated as a component of the National Wilderness Preservation System by ANILCA. This includes wilderness designation for some 35 miles of the arctic coastine from the Aichlik River east to the Canadian border.

ANWR offers wildlife, scientific, recreational, and esthetic values unique to the Arctic coastal ecosystem. In ANWR, a person traveling on foot or by boat can traverse a full range of North Slope landscapes and habitats, because of the proximity of the Arctic coast to the mountains. The four tallest peaks in the Brooks Range are found in the Arctic Refuge.

ANWR contains the only extensive active glaciers in the Brooks Range. Found on the refuge is a full complement of arctic flora and fauna, including a portion of the calving grounds for the Porcupine caribou herd, the second largest in Alaska (approximately 180,000 caribou), and habitat for the threatened Arctic peregrine falcon, the lesser snow goose, other migratory bird species, and a reintroduced muskoxen herd.

At the same time, the North Slope of Alaska, including portions of ANWR has long been recognized as having excellent potential for large oil and gas reserves. While there has been exploration in the Arctic region for many years, the most notable success came in 1968 with the discovery of oil and gas at Prudhoe Bay. Located just 65 miles west of the ANWR on lands owned by the State of Alaska, the Prudhoe field has proven to be the largest in North America with original producible reserves of 9.6 billion barrels of oil and 26 trillion cubic feet of gas. Current production from Prudhoe Bay averages 1.8 million barrels per day—approximately 20 percent of the total U.S. domestic crude oil production.

The coastal portion of ANWR is a particularly promising area for oil and gas. For years, this area has been rated by many geologists as the most outstanding onshore target for oil and gas in the United States.

The Congressionally Mandated Coastal Plain Study

During the consideration of ANILCA, some wanted all of ANWR included in the National Wilderness Preservation System while others argued that at least a portion of this area should be made available for oil and gas exploration, production, and development. Although the House twice passed legislation designating all of ANWR as wilderness, the version of ANILCA that was ultimately enacted into law recognized that additional information was necessary before a final decision could be made regarding that portion of ANWR with the highest oil and gas potential.

Section 1002 of ANILCA required the Secretary of the Interior to comprehensively study a 1.5 million acre strip (approximately 100

miles long and 30 miles wide) along the coast of ANWR. Identified in the statute as the "Coastal Plain", this was the area generally recognized as having the highest oil and gas recovery potential.

The Secretary was directed to transmit a study to the Congress, not earlier than five years from the enactment of ANILCA and not later than 5 years and 9 months after the date, which was to contain:

> 1. The identification, by means other than the drilling of exploratory wells, of those areas within the Coastal Plain having oil and gas production potential and an estimate of the volume of the oil and gas available;
>
> 2. A description of the fish and wildlife, their habitats, and other resources that are within the area;
>
> 3. An evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such area may have on these resources;
>
> 4. A description of how such oil and gas, if produced within such area, may be transported to processing facilities;
>
> 5. An evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and
>
> 6. The recommendation of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the Coastal Plain should be permitted and, if so, what additional legal authority is necessary to ensure that adverse effects of such activities on fish and wildlife, their habitat, and other resources are avoided or minimized.

Section 1003 of ANILCA makes it clear that Congress reserved to itself the final decision to open the Coastal Plain (or any other portion of ANWR) to development:

> Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.

Likewise, section 1004 directs that, subject to valid existing rights and the activities carried out to gather information for the 1002 study, the Coastal Plain shall, until Congress determines otherwise, be administered to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

THE 1002 REPORT—RECOMMENDATION AND FINDINGS

Recommendation

In April 1987, the Secretary of the Interior transmitted the report required by section 1002 of ANILCA ("1002 Report") to the Congress. The Secretary recommended that the entire 1.5 million acre Coastal Plain be opened to oil and gas leasing. In the letter of transmittal, the Secretary stated:

> Based on the analyses conducted, public comment on the draft report, the national need for domestic sources of oil and gas, and the Nation's ability to develop such resources

in an environmentally sensitive manner as demonstrated by two decades of success at Prudhoe Bay and elsewhere, I have selected as my preferred alternative, making available for consideration the entire Arctic Refuge Coastal Plain for oil and gas leasing.

The report also recommended that oil and gas development and production be permitted on privately-owned lands north of the Coastal Plain (but inside ANWR) owned by two Alaska Native Corporations, the Arctic Slope Regional Corporation (ASRC) and the Kaktovik Village Corporation (KIC). It should be noted that although these lands are privately owned, in accordance with section 22(g) of the Alaska Native Claims Settlement Act, they remain subject to the laws and regulations governing development of the ANWR. As such, oil and gas leasing and development cannot occur on the KIC/ASRC lands until authorized by an Act of Congress.

Findings

The following is a brief summary of the major findings contained in the 1002 report.

1. Oil and Gas Resources

ANWR is located between Prudhoe Bay on the west and the Canadian Beaufort Sea-Mackenzie Delta region to the east. Based on extensive surface geological and seismic studies of the Coastal Plain, the report concludes that oil and gas resources are likely to be found in 26 identified subsurface structures in the area.

The 1002 report estimates that there is a 95-percent chance that the Coastal Plain contains more than 4.8 billion barrels of oil and 11.5 trillion cubic feet of gas in place. According to the report, there is a 5-percent chance that the Coastal Plain contains 29.4 billion barrels of oil and 64.5 trillion cubic feet of gas. In terms of recoverable resources, the report concluded that there is a 19 percent chance that an economic field will be discovered on ANWR's Coastal Plain. The estimates of economically recoverable reserves range from a low of 600,000 barrels to up to 9.2 billion barrels with a mean estimate for recoverable oil at 3.2 billion barrels.

If productive, the 1002 area's fields could be the largest domestic fields discovered since Prudhoe Bay. Except for Prudhoe and its adjoining fields, no U.S. field with reserves exceeding 1 billion barrels of oil has been discovered since 1949. The size of the 1002 area's structures and their potential for oil accumulations are geologically the Nation's best onshore targets for the discovery of very large oil fields. If productive, the large field would join the list of "giant" oil fields which have contributed more than two-thirds to total domestic oil production.

The unique geologic features underlying the 1002 area create the potential for discoveries which would make a very substantial contribution to domestic oil reserves. Despite the area's remote location and hostile environment, it is the petroleum exploration target in the onshore United States having the greatest potential. Data from outcropping rocks within the area and from nearby wells, combined with seismic information gathered from 1983 to 1985, in-

dicate geological conditions which are exceptionally favorable for major discoveries.

2. Fish and Wildlife Resources

The 1002 report makes the following assessment with regard to fish and wildlife:

> The Arctic Refuge is the only conservation system unit that protects, in an undisturbed condition, a complete spectrum of the Arctic ecosystems in North America. Approximately 8 million acres of the refuge is designated as wilderness by ANILCA section 702(3), and adjoins the 1002 area on the south and east, including the coastal plain from the Eastern 1002 boundary to the Canadian border.
>
> The 1002 area is the most biologically productive part of the Arctic Refuge for wildlife and is the center of wildlife activity. It serves as an important calving ground for the porcupine caribou herd; it contains a high percentage of the refuge's observed muskoxen range; it is an important staging area for lesser snow geese; it provides nesting habitat for waterfowl and shorebirds; and it is frequently used by polar bears from the Beaufort Sea population. Migrating caribou and the postcalving caribou aggregation offer an extraordinary spectacle. The area presents many opportunities for scientific study of a relatively undisturbed ecosystem.

3. Environmental Impacts Associated With Development

While the report concludes that exploration and development drilling would have only minor effects on wildlife resources in the 1002 area, full production could have potentially major effects on the 180,000 caribou in the porcupine caribou herd and on muskoxen in the refuge. As used in the report, major effects on wildlife include widespread, long-term change in habitat availability or quantity which would likely modify natural abundance or distribution of species.

The report notes that oil development would result in long term changes in the wilderness environment, wildlife habitats, and Native community activities currently existing. The report also concludes that the wilderness character of the 1002 area would be lost if oil and gas development and production occur.

4. Transportation of ANWR Oil

The 1002 report cites the proximity of the Prudhoe Bay fields and the Trans-Alaska Pipeline System as important factors in facilitating the economics of Coastal Plain oil production. Under the preferred alternative contained in the report, a 150 mile east-west pipeline would be constructed across the Coastal Plain to connect into TAPS Pump Station 1 at Prudhoe Bay.

Production from the Coastal Plain could begin in the late 1900's, at a time when Prudhoe production is predicted to begin declining to the point that TAPS would have extra capacity. Transportation of ANWR oil would prolong the useful life of the pipeline and

permit continued production for North Slope fields that would otherwise be uneconomical.

5. Evaluation of the Need for Domestic Supplies of Oil

The 1002 report emphasizes that the growing U.S. reliance on imported oil could have potentially serious implications for national security. Domestic production declined in 1986 by 10 percent and by 6 percent in 1987. At the same time, U.S. consumption is on the rise. OPEC countries are expected to supply up to 60 percent of the world oil by 1995 when the United States will import over half of its supplies at an estimated cost of $80 billion.

In addition, the 1002 report notes the economic benefits, especially on the balance of trade, from oil production on the Coastal Plain. Based on the mean recoverable oil estimate of 3.2 billion barrrels, ANWR production by the year 2006 could provide 4 percent of total U.S. demand (about 660,000 barrels per day) and reduce imports by nearly 9 percent.

The billions of barrels of oil that may exist in the 1002 area could make an important contribution to the national need for domestic sources of oil. Alaska North Slope crude oil, especially that from Prudhoe Bay, now contributes approximately 20 percent of domestic production. However, production from Prudhoe Bay has peaked and a decline is expected in the near future. The Kuparuk River and other fields are currently being developed and coming on line. However, they will begin to decline in the late 1990's. Oil from the 1002 area could help moderate these declines in supply and substantially reduce the need for increased imports.

The Committee carefully considered the findings of this report as well as other information made available during the 10 days of hearings and eight business meetings held on this issue over the last two years. The Committee made an effort to hear as many perspectives on this issue as possible and has compiled a thorough and balanced record.

On the basis of that record, the Committee has reported a measure which authorizes and directs that the Coastal Plain of ANWR be opened to oil and gas leasing, exploration, development, and production. At the same time, the measure balances the national need to find and produce more oil with the responsibility to prevent significant adverse effects on the wildlife, fish, subsistence and other values present on the Coastal Plain.

Legislative History

100th Congress

As noted above, the Secretary of the Interior transmitted his report to Congress regarding the Coastal Plain of ANWR on April 20, 1987. During the 100th Congress, the full Energy and Natural Resources Committee conducted five days of oversight hearings on this report and the general issue of opening the Coastal Plain of ANWR to oil and gas leasing (S. Hrg. 100–188 Parts 1 and 2).

A legislative proposal to permit leasing in this area was introduced last Congress by Senators Murkowski, Stevens, and others on May 15, 1987. This legislation, S. 1217, was the subject of four additional days of hearings before the full Committee (S. Hrg. 100–452).

Following those hearings, at the direction of Senators Johnston and McClure, a majority/minority staff draft was prepared and used as the mark-up vehicle for the Committee's consideration of the ANWR issue during the 100th Congress. After five business meetings, the Committee ordered the staff draft, with several modifications, favorably reported as an original bill (S. Rept. 100-308). This measure, S. 2214, was placed on the Senate Calendar on March 24, 1988. The Senate took no further action on the bill.

101st Congress

On February 9, 1989 Senators Johnston and McClure introduced S. 406 and three amendments (Amendments No. 3, 4, and 5). With the exceptions noted below, S. 406 and the three amendments are virtually identical to the measure reported last Congress. The three differences are:

(1) modification of the provisions dealing with the distribution of revenues from ANWR;

(2) deletion of the provision prohibiting the export of oil from ANWR; and

(3) deletion of provisions requiring the preparation of an energy plan.

On March 6, 1989, the full Committee conducted a hearing on S. 406 and the three amendments. Also on March 6, a majority/minority staff draft bill, incorporating the text of the bill and the amendments, was circulated to all members of the Committee. This staff draft served as the mark-up vehicle for the Committee's deliberations.

The Committee met in open business sessions to consider this legislation on March 8, 15, and 16.

At the business meeting on Thursday, March 16, 1989, the Senate Committee on Energy and Natural Resources ordered an original bill favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, March 16, 1989, by a majority vote of a quorum present, recommends that the Senate pass the bill as described herein.

The rollcall vote on reporting the measure was 12 yeas, 7 nays, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Bumpers*
Mr. Heflin*	Mr. Ford
Mr. Rockefeller	Mr. Metzenbaum*
Mr. McClure	Mr. Bradley*
Mr. Hatfield	Mr. Bingaman*
Mr. Domenici*	Mr. Wirth
Mr. Wallop	Mr. Conrad
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn*	
Mr. McConnell	

*Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 sets forth the short title of the Act.

TITLE I—STATEMENT OF PURPOSE AND DEFINITIONS

Section 101 sets forth the purpose and policy of the Act.
Section 102 sets forth definitions.

TITLE II—CONGRESSIONAL DETERMINATION OF COMPATIBILITY

Section 201 sets forth a congressional determination of compatibility and states that no further findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act are required to implement this determination.

In making such a determination, the Committee notes the unique status of the Coastal Plain resulting from the provisions in ANILCA requiring a special study of the area's wilderness, wildlife, energy, and other values and directing that Congress be the final arbiter of the competing interests in this area. The language in the reported bill concerning compatibility should not be viewed as a precedent for other units of the refuge system or as a precedent for other non-oil and gas related uses in ANWR.

The Committee is aware that the so-called "compatibility test" under the Wildlife Refuge Administration Act is not a balancing test of competing values. Its application and the standards to be used in making such a determination are spelled out in some detail in the U.S. Fish and Wildlife Service Refuge Manual and are not affected as they apply to other refuge units or non-oil and gas related activities in ANWR.

TITLE III—COASTAL PLAIN COMPETITIVE LEASING PROGRAM

Subsection 301(a) states that Congress directs the Secretary of the Interior and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain.

Subsection 301(b) provides that this Act shall be the sole authority for leasing on the Coastal Plain.

Subsection 302(a) provides that the Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of the Act, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by Title IV of the Act. Such rules and regulations shall be promulgated within nine months after the date of enactment of the Act.

Subsection 302(b) provides that in the formulation and promulgation of rules and regulations under the Act, the Secretary shall give due consideration to the views of appropriate officials of the State of Alaska and the Government of Canada and shall consult with the Environmental Protection Agency and the Army Corps of

Engineers in developing rules and regulations relating to the environment.

Subsection 302(c) provides that the Secretary shall periodically review and, if appropriate, revise the rules and regulations.

Subsection 303(a) provides that the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA") and section 102(2)(C) of the National Environmental Policy Act of 1969 ("NEPA"), is found by the Congress to be adequate to satisfy the legal requirements under NEPA with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of the leasing program prior to conducting the first lease sale.

Subsection 303(b) provides that except as provided in subsection (a), nothing in the Act shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of NEPA to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by the Act, nor shall anything in the Act be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

Subsection 304(a) provides that lands may be leased pursuant to the provisions of the Act to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended.

Subsection 304(b) provides that the Secretary shall, by regulation, establish procedures for certain specified activities.

Subsection 304(c) provides that the Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process. For the first lease sale, the Secretary shall, consistent with the requirements set forth in title IV of the Act, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of 300,000 acres. If the total acreage nominated is less than 300,000 acres, he shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than 300,000 acres of the Coastal Plain be offered in such sale. Thereafter, no more than 300,000 acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease shall be held thirty-six months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

Subsection 304(d) provides that areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary and that notice shall be provided to the specified appropriate Committees of the Congress. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary

shall, consistent with the provisions of subsection (c), offer such lands for leasing.

Subsection 305(a) provides that the Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The Secretary is to ensure the receipt of fair market value. The royalty shall be fixed in the lease and shall be not less than twelve and one-half per centum in amount or value of the production removed or sold from the lease.

Subsection 305(b) provides that the Secretary shall not accept a bid for a lease if the Secretary finds, after notice and hearing, that the bidder is not meeting diligent development requirements on any other Federal mineral lease.

Subsection 305(c) provides that following each notice of a proposed lease sale and before the acceptance of bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to conduct an antitrust review of each lease sale. The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may refuse to accept an otherwise qualified bid for such lease or modify or impose terms or conditions on the lease. The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if he makes certain specific findings. The remaining provisions in the subsection are self-explanatory.

Subsection 305(d) provides that no lease issued under the Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

Subsection 305(e) provides that nothing in the Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law. It is the intent of the Committee that the findings of any antitrust review shall not create any immunity or defenses in any private or government antitrust actions.

Subsection 305(f) sets forth definitions.

Section 306 sets forth lease terms and conditions. The provisions are self-explanatory.

Subsection 307(a) provides that all exploration activities pursuant to any lease issued or maintained under the Act shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. The remaining provisions of the subsection are self-explanatory.

Subsection 307(b) provides that all development and production pursuant to a lease issued or maintained pursuant to the Act shall be conducted in accordance with an approved development and production plan. The remaining provisions of the subsection are self-explanatory.

Subsection 307(c) sets forth information to be included in exploration plans and development and production plans where applicable.

Subsection 307(d) sets forth procedures for plan approval. The provisions are self-explanatory.

Subsection 307(e) provides that if at any time while activities are being carrried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, their habitat, or the environment, the Secretary, after consultation with the lessee shall: (1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect; (2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or (3) terminate and cancel the plan where actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

Subsection 308(a) sets forth the requirement for a performance bond. The provisions of the subsection are self-explanatory.

Subsection 308(b) sets forth the requirements relating to the amount of the performance bond. The provisions of the subsection are self-explanatory.

Subsection 308(c) provides that in the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond to conform to such modified plan.

Subsection 308(d) provides that the responsibility and liability of the lessee and its surety under the bond or security deposit shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

Subsection 308(e) provides that within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond or security deposit has been terminated.

Section 309 provides that the Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this Act: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat or the environment. If a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

Subsection 310(a) sets forth the requirements relating to cancellation of nonproducing leases. The provisions of the subsection are self-explanatory.

Subsection 310(b) sets forth the requirements relating to cancellation of producing leases. The provisions of the subsection are self-explanatory.

Paragraph 310(c)(1) provides that in addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be cancelled at any time, if the Secretary determines, after a hearing, that: (1) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; and (2) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time.

Paragraph 310(c)(2) provides that cancellation under subsection (c) shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

Paragraph 310(c)(3) provides that cancellation under subsection (c) shall entitle the lessee to receive certain specified compensation.

Section 311 provides that no lease issued under the authority of the Act shall be assigned or sublet, except with the consent of the Secretary.

Section 312 provides that the lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this Act. The Secretary shall accept the relinquishment by the lessee of any lease issued under this Act where there has not been surface disturbance on the lands covered by the lease.

Section 313 provides that the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

Section 314 sets forth requirements relating to oil and gas information. The provisions of the section are self-explanatory.

Subsection 315(a) provides that except as provided in section 316 of the Act, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under the Act. Proceedings may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located.

Subsection 315(b) provides that at the request of the Secretary, the Attorney General or a United States Attorney shall institute a civil action in the district court of the United States for the district in which any defendant resides or may be found, or in the judicial

district in which the Coastal Plain is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of the Act, any regulation or order issued under this Act, or any term of a lease issued pursuant to the Act.

Subsection 315(c) authorizes civil penalties of not more than $10,000 for each day of the continuance of a failure to comply with the Act, a lease term, or a regulation or order issued under the Act, after notice of such failure and expiration of any reasonable period allowed for corrective action. The remaining provisions of the subsection are self-explanatory.

Subsection 315(d) provides for criminal penalties of not more than $100,000 or imprisonment for not more than ten years, or both. The remaining provisions of the subsection are self-explanatory.

Subsection 315(e) sets forth provisions relating to the liability of corporate officers and agents for violations by a corporation or other entity. The provisions of the subsection are self-explanatory.

Subsection 315(f) is self-explanatory.

Subsection 315(g) provides that notwithstanding any other provision of law, if any area of the Coastal Plain or adjacent State waters has been or is being polluted by discharges of oil or hazardous or toxic substances from exploration, development, or production of oil or gas or related activities, conducted by, or on behalf of, a responsible party, and if the pollution has damaged or is damaging fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters, or if such pollution is causing a substantial threat of damaging those fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters, the responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in this subsection that arise directly out of or directly result from pollution that has damaged, or is damaging or is causing a substantial threat of damaging fish or wildlife, their habitat, or the environment of the Coastal Plain or adjacent State waters. The remaining provisions of the subsection are self-explanatory.

Section 316 addresses judicial review. The provisions of the section are self-explanatory.

Section 317 is self-explanatory.

Subsection 318(a) provides that the prohibitions and limitations contained in section 1003 of ANILCA, insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are repealed.

For the purpose of this Act, the Committee intends that the term "Inupiat Eskimo people" shall mean the Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation, Alaska Native Claims Settlement Act (ANCSA) corporations established by Inupiat Eskimo people of Alaska's North Slope.

Subsection 318(b) provides that the prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Coastal Plain are repealed as of the day after the first lease sale is held pursuant to the Act. With respect to the lands and interests

therein described in the subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

Subsection 318(c) provides that the substantive provisions of the final regulations issued pursuant to this Act which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain are applicable to the exploration and development of all subsurface property interests owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge. Prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection 318(a), shall be governed by the stipulations set forth in Appendix 2 of the August 9, 1983 agreement between the Arctic Slope Regional Corporation and the United States.

Subsection 318(d) sets forth procedures for the bringing of claims for money damages or other available relief by the Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of the Act constitute a taking of contract or property rights under the Fifth Amendment of the Constitution.

Last Congress the Committee added a provision to several measures reported from the Committee prohibiting the Secretary of the Interior from conveying land, by exchange or otherwise, located within the Coastal Plain of ANWR without prior approval by Act of Congress. This language was included in a free standing measure (S. 1493); the Arctic Coastal Plain Oil and Gas Leasing Act (S. 2214); and the Alaska Submerged Lands Act (H.R. 278). While neither of the first two measures was considered by the Senate, the Submerged Lands Act was signed into law on October 15, 1987. (Pub. Law No. 100-130).

The Committee adopted this language in response to a proposal by the Department of the Interior to exchange approximately 891,000 acres of inholdings owned by various Alaska Native Corporations inside wildlife refuges in Alaska for approximately 166,000 acres of federal oil and gas interests in the Coastal Plain of ANWR. The Committee included this language in the Submerged Lands Act to ensure that the Congress, not the Secretary of the Interior, would make the final decision regarding when and under what conditions ANWR would be opened for oil and gas leasing.

The Committee note that this legislation does not address the land exchange issue. It does not affect the existing statutory prohibition on such exchanges without prior approval of the Congress, and the Committee has no intention of changing the law.

The Committee notes that this legislation does not address the reservations regarding these exchanges. Many of these concerns were discussed in a recent report from the General Accounting Office which was highly critical of various aspects of the proposed exchanges and recommended that further consideration of the exchanges be discontinued. (GAO/RCED-88-179).

Likewise, the Committee strongly urges the proponents of these exchanges not to pursue them as it is virtually certain that neither the Committee nor the Congress would ever approve them.

As noted above, although the primary purpose of the provision in the Submerged Lands Act was to address the issue of the proposed land exchanges, the language prohibits *any conveyance*, by ex-

change or otherwise, other than land validly selected prior to July 28, 1987, without prior approval by Congress.

The Committee is aware that the Kaktovik Inupiat Corporation contends that under ANCSA and ANILCA, it has an entitlement to 92,160 acres of land in the vicinity of the Village. At the current time, KIC has not selected its full land entitlement and the Department of the Interior has indicated that KIC is likely to be underselected by approximately 2,400 acres. The Committee recognizes that the language (section 201) of the Submerged Lands Act, in its attempt to prevent future land exchanges in the Coastal Plain, may also operate to prevent the conveyance of the surface estate of these lands to KIC and the subsurface estate of these lands to Arctic Slope Regional Corporation in accordance with the provisions of ANCSA and ANILCA.

While the Committee did not address this matter in the bill as reported, the Committee did indicate its concern that neither the Submerged Lands Act nor this legislation, which authorizes oil and gas leasing in the Coastal Plain, should preclude KIC and ASRC from receiving the lands to which they are otherwise entitled. The Committee believes that every effort should be made to ensure that KIC's remaining land selection rights in the Coastal Plain are concluded prior to the creation of third-party property interests, such as leases in the Coastal Plain. The Committee encourages KIC and the BLM to promptly identify lands within the original ANCSA withdrawal for KIC to fulfill its remaining 2,400-acre entitlement so that this issue can be resolved as expeditiously as possible.

TITLE IV—COASTAL PLAIN ENVIRONMENTAL PROTECTION

Subsection 401(a) provides that the Secretary shall administer the provisions of this Act through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, and that shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations.

The Committee does not intend that the environmental standard contained in this bill, i.e., "no significant adverse effects on fish and wildlife, their habitat, and environment," be interpreted to prohibit all leasing, development and production in ANWR. At the same time, the Committee recognizes that when applied on a case-by-case basis the standard may indeed result in certain activities being precluded or prohibited. The Committee recognizes that if exploration, development and production of oil and gas are to occur as authorized, certain facilities necessary to those activities will be required and certain impacts on the environment are inevitable. However, the bill requires that those activities, while expected and authorized, will be conducted in a manner which will result in no significant adverse effects on the environment. This standard is expected to be interpreted reasonably.

The Committee does not intend the "no significant adverse effect" standard to be equated to the standard applicable under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) for determining whether preparation of any environmental impact statement is required. The Committee anticipates that environmental impact statements may be required at various steps in the leasing process. This is not to say, however, that because an action is deemed to be a "major Federal action significantly affecting the quality of the human environment" for the purposes of NEPA that it also would ipso facto result in a "significant adverse effect on fish and wildlife, their habitat, or the environment" within the context of the Arctic Coastal Plain Competitive Oil and Gas Leasing Act.

The Committee is mindful that the standard in NEPA is a procedural one, i.e., a standard used to determine whether the environmental impact statement process must be undertaken. The Committee intends the "no significant adverse effect" standard to be a substantive standard, and thus expects that the NEPA standard and the standard in this Act will be construed to have different meanings. In addition, the plain language of the standards is different, and the Committee therefore expects that the standards would not be construed to be identical.

The legislation contains detailed directives relating to the stipulations, conditions and mitigation requirements governing oil and gas exploration, development and production. The Committee believes that if these requirements, as well as other applicable federal and state laws, are complied with, there can be a meaningful program of oil and gas development without significant adverse effects on fish and wildlife, their habitat, and the environment.

The passage of this Act is not intended to affect the standards for environmental protection set forth in other statutes, such as the Clean Air Act and the Clean Water Act, and their applicability to the Coastal Plain. The standards of each statute must be independently addressed and independently satisified.

Subsection 401(b) provides that the Secretary shall also require, with respect to any proposed drilling and related activities, that (1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment; (2) a mitigation plan be implemented to avoid, minimize or compensate (in that order and to the extent practicable) any adverse effect assessed under paragraph (1) of the subsection; and (3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

Subsection 402(a) provides that prior to implementing the leasing program authorized by title III of the Act, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by the Act are conducted in a manner consistent with the purposes and environmental requirements of the Act.

Subsection 402(b) provides that the proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by title III of this Act shall require

compliance with all applicable provisions of federal and State environmental law and shall also require:

(1) as a minimum, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods: *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain.

(4) design safety and construction standards for all pipelines and any access and service roads;

(5) prohibitions on public access and use on all pipeline access and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this Act, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: *Provided*, That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river system; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and

domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

Subsection 402(c) provides that in preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider: (1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31-33); (2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in Appendix 2 of the August 9, 1983, agreement between Arcitic Slope Regional Corporation and the United States; and (3) the operational stipulations for Koniag ANWR Interest lands contained in the draft Agreement between Koniag, Inc. and the United States of America on file with the Secretary of the Interior on December 1, 1987.

Subsection 403(a) designates the Sadlerochit Spring area to be a Special Area. The remaining provisions of the subsection are self-explanatory.

Subsection 403(b) authorizes the Secretary to designate other areas of the Coastal Plain as Special Areas if the Secretary determines they are of unique character and interest so as to require such special protection. The remaining provisions of the subsection are self-explanatory.

Subsection 404(a) requires the Secretary, after providing for public notice and comment, to prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. The subsection sets forth objectives for the plan.

Subsection 404(b) provides that the plan shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of ANILCA.

Subsection 405 provides that notwithstanding title XI of ANILCA, the Secretary is authorized to grant under section 28 of the Mineral Leasing Act rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as

to avoid unnecessary duplication of roads and pipelines. The comprehensive oil and gas leasing and development regulations issued pursuant to the Act shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

Subsection 406 provides that in addition to any other environmental studies required by law, subsequent to exploring or developing of any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environment information as he deems necessary. The remaining provisions of the section are self-explanatory.

Subsection 407(a) provides that the Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this Act.

Subsection 407(b) sets forth responsibilities of holders of a lease. The provisions of the section are self-explanatory.

Subsection 407(c) provides that the Secretary shall promulgate regulations to provide for onsite inspection of facilities. The provisions of the section are self-explanatory.

Section 408 provides funding for environmental monitoring and enforcement. Congress authorizes and directs the Secretary of the Treasury to make available to the Administrator of the Environmental Protection Agency ("Administrator") $5,000,000, not later than 60 days after the first lease sale under the Act and annually thereafter, until 10 years after oil and gas exploration, production and development activities on the Coastal Plain have ceased. The Administrator shall distribute annually to the State of Alaska not less than 25% of such amount. These moneys shall be used for activities, or in support of activities, within the State of Alaska by the Environmental Protection Agency and the State of Alaska for monitoring compliance with, and enforcing, all Federal environmental laws within their jurisdiction applicable to oil and gas exploration, development and production under this Act, and monitoring compliance with, and enforcing, all such laws, with respect to owners, operators, and other persons having business in connection with leases granted pursuant to this Act. The Administrator is also directed to consult with the State of Alaska and the Secretary of Transportation with respect to the proper allocation of responsibilities between the State and the Secretary for environmental statutes under the jurisdiction of the Department of Transportation (DOT). The agreement between the Administrator and the State is to reflect the agreement of the DOT and the State and will provide funding for the State of Alaska to assume its responsibilities.

TITLE V—LAND RECLAMATION AND RECLAMATION LIABILITY FUND

Section 501 provides that the holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or ttransportation, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease hold-

er's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

Section 502 provides that the standard to govern the reclamation of lands required to be reclaimed under the Act, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and realted activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of the roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially-available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

Subsection 503(a) directs that within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund") be established by the Secretary.

Subsection 503(b) aprovides that the Secretary shall collect from the owner of any commercially-produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil first enters the trans-Alaska pipeline a fee of five cents per barrel. The collection of the fee shall cease when $50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below $45,000,000.

Subsection 503(c) provides that all revenues collected under subsection (b) shall be paid into the Reclamation Fund. The remaining provisions of the subsection are self-explanatory.

Subsection 505(d) provides that the revenues in the Reclamation Fund shall be available, with the approval of the Secretary, for certian designated purposes. For purposes of paragraph 503(d)(3), North Slope lands are lands in Alaska north of 68 degrees north latitute and east of the western boundary of the National Petroleum Reserve—Alaska.

Subsection 503(e) provides that the United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover certain funds expended due to a failure by the responsible party to reclaim such area as required by this Act: *Provided,* That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

Subsection 503(f) provides that any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the Migratory Bird Conservation Fund

TITLE VI—DISPOSITION OF OIL AND GAS REVENUES

Section 601 provides that notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees, interest charges or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, Alaska shall be disributed as follows: (a) fifty per centum to the State of Alaska; (b) twenty per centum deposited into the Land and Water Conservation Fund; (c) fifteen per centum deposited into a special account in the Treasury to be used in accordance with the provisions of section 603 for the preservation, protection, creation, enhancement, or restoration of wetlands in the United States; (d) ten per centum to miscellaneous receipts in the Treasury; and (e) five per centum to be used by the Secretary of Energy for funding research, development, and commercialization of energy conservation and alternative sources authorized in section 704.

Subsection 602(a) establishes a special account within the Land and Water Conservation Fund ("the Fund"). The remaining provisions of the subsection are self-exploratory.

Subsection 602(b) provides that at the time of the submission of the President's budget, each Federal land managing agency eligible to receive moneys from the Fund shall provide the Congress with a list, in descending order of priority, of land acquisition projects which have been authorized (the "priority list"). The subsection sets forth requirements relating to the priority lists and factors to be considered in preparing such lists.

Subsection 602(c) provides that except as provided in subsection (d), funds shall be allocated from the special account in accordance with the priority lists submitted pursuant to this section unless such lists are modified by law. No agency shall receive more than fifty per centum of the funds available from the special account in any one year. The remaining provisions in the subsection are self-explanatory.

Section 602(d) provides that unless the priority lists are modified by law, the Secretary of the Treasury is authorized and directed, beginning one year after the lists are submitted, to make such funds directly available to the land managing agencies to be used solely for land acquisition projects on the respective priority lists in accordance with the following formula: (1) forty-five per centum to the Fish and Wildlife Service; (2) forty per centum to the National Park Service; (3) ten per centum to the Forest Service; and (4) five per centum to the Bureau of Land Management.

Subsection 603(a) provides that those funds allocated for wetland protection purposes pursuant to subsection 601(c) shall be credited to a special wetlands protection account ("Wetlands Account") in the Treasury of the United States. Such funds shall be available for expenditure solely in accordance with the provisions of this section. Any funds deposited into the Wetlands Account shall remain available until expended.

Paragraph 603(b)(1) provides that within 30 days after the date funds are first credited to the Wetlands Account, the Secretary, in conjunction and consultation with the Secretary of the Army acting through the Chief of the Corps of Engineers, the Secretary

of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency shall initiate a process to identify and prepare a list of high priority projects to preserve, protect, enhance, restore, or create wetlands in the United States.

The Committee recognizes that the type of project proposed will likely vary according to the mission and responsibilities of the affected agencies. For example, the Corps of Engineers and the Bureau of Reclamation are likely to be involved with construction-oriented projects while the EPA and the National Marine Fisheries Service will likely concentrate on research-related projects affecting wetlands. The Committee did not try to limit the types of projects to be considered, but left the determination to the best professional judgement of the agencies involved given the goal of protecting and enhancing the Nation's wetlands.

Paragraph 603(b)(2) provides that to assist in the preparation of the list, the Secretary of the Treasury shall make funds available from the Wetlands Account to the Secretary to prepare preliminary assessments; general and site specific inventories; reconnaissance, engineering, or other studies, preliminary design work; and such other studies as may be necessary to identify such projects.

Paragraph 603(b)(3) provides that such funds as are necessary for these purposes, but not to exceed $10,000,000 annually, shall be allocated by the Secretary to the Federal agencies identified in paragraph (b)(1) (including the Department of the Interior) based on the need for such funds and such other factors as the Secretary, in consultation with the other agencies, deems appropriate to carry out the purposes of this subsection.

Paragraph 603(c)(1) provides that as soon as practicable after funds are made available pursuant to subsection (b), the Secretary shall compile and transmit the list of priority projects to the Congress. Thereafter, the list shall be transmitted to the Congress annually as part of the President's budget submission. Such transmittal shall also include a statement from the Secretary of the Treasury indicating the amount available for expenditure from the Wetlands Accounts.

Paragraph 603(c)(2) sets forth items which shall be included on the list.

Paragraph 603(c)(3) is self-explanatory.

Paragraph 603(c)(4) provides that in preparing the list, special consideration shall be given to the inclusion of projects affecting wetland areas, including but not limited to coastal wetland areas, having particulary high value as fish and wildlife habitat, for purposes of flood or pollution control and which are, or are likely to be, subject to erosion, conversion or other degradation.

Subsection 603(d) provides that except as provided in subsection (b), funds from the Wetlands Account shall be allocated in accordance with the list submitted pursuant to this section unless such list is modified by law.

Subsection 603(e) provides that unless the list is modified by law, the Secretary of the Treasury is authorized and directed, beginning one year after the list is transmitted pursuant to paragraph (c)(1), to make funds from the Wetlands Account directly available, without further appropriation, to the head of the appropriate agency for the purpose of carrying out projects as identified on the list.

Subsection 603(f) defines the term "project" as used in section 603.

Subsection 604(a) provides that any legal action, including an action for declaratory judgment, to challenge the determination made in section 601(a) of this Act of the State of Alaska's share of oil and gas revenues shall be expedited in every way by the court. Any such action shall be brought within ninety days of enactment of this Act in an appropriate United States District Court, or such action shall be barred. Any review of an interlocutory or final judgment, decree, or order of the United States District Court in such action may be had only upon direct appeal to the Supreme Court of the United States.

Subsection 604(b) is self-explanatory.

Subsection 604(c) provides that if any action is brought in accordance with subsection (a), no lease sale shall occur under section 304 of the Act until a final nonappealable decision has been issued in any such action.

Subsection 604(d) provides that if the revenue sharing provision of section 601(a) of the Act is held invalid, the remainder of the Act shall be void.

The Committee is aware that the State of Alaska contends that the Alaska Statehood Act guarantees that the State will receive 90 percent of any mineral revenues from ANWR unless the State agrees to accept a different percentage.

The Committee strongly disagrees with the State's contention.

The Committee carefully considered the State's contention and determined that the Alaska Statehood Act in no way restricts Congress to the distribution scheme set out in the Mineral Leasing Act when it enacts legislation to provide for distribution of revenues from new mineral leases. We agree with the conclusion of the Solicitor of the Department of the Interior that:

> Congress has the authority under the Property Clause of the Constitution to alter the distribution formula set out in the Mineral Leasing Act for oil and gas revenues from the Arctic National Wildlife Refuge. The State of Alaska has not met the heavy burden of persuasion with respect to the argument that those Property Clause powers were terminated by the section in the Statehood Act amending the MLA to include Alaska in the Act's revenue distribution formula. We can find no support in the Alaska Statehood Act for the proposition that the MLA was incorporated into the compact between the federal government and the State. In fact, opposite the proposition, we find other instances in which Congress has amended the MLA in a manner which adversely affected the State's interests.

The Solicitor's Opinion is printed in the Appendix of this Report.

TITLE VII—ENERGY PLAN

Paragraph 701(a)(1) provides that not later than 15 months after the date of enactment of the Act, the Secretary of Energy, with the advice and assistance of the Chairman of the Council on Environmental Quality, the Secretary of the Interior and the National Academy of Sciences, shall prepare and transmit to the Congress

an energy plan which shall include, among other things, a proposed statement of national energy policy objectives.

Paragraph 701(a)(2) provides that the plan shall focus on the total projected demand in the United States for energy and for crude oil and petroleum products, in particular, over the estimated period of potential production from the Coastal Plain (approximately through the year 2030). The plan also shall include a range of likely scenarios for crude oil and petroleum products demand and a description of alternative sources of supply, including imported crude oil and petroleum products, likely to be available to meet such demand.

Paragraph 701(a)(3) sets forth information to be included in the plan. The provisions are self-explanatory.

Subsection 701(b) provides that the range of demand scenarios under subsection (a) shall identify and evaluate all potential and realistic alternative energy resources available to meet the range of demand scenarios on a consistent basis. The provision lists items to be included as alternative energy resources and is self-explanatory.

Paragraph 701(c)(1) provides that the energy plan shall include a ranking of all potential and realistic alternatives identified under subsection (b). The plan also shall provide recommendations to the Congress concerning the implementation of such alternative. The remaining provisions in the paragraph are self-explanatory.

Paragraph 701(c)(2) provides that in developing such recommendations, the Secretary of Energy shall give special considerations to other specified measures. The provisions are self-explanatory.

Subsection 702(a) provides that the Secretary of the Interior, to accompany the energy plan required under section 701, shall prepare a study of present and projected oil and gas development in the Arctic Region of Alaska, both onshore and offshore, excluding all portions of the Arctic National Wildlife Refuge which are: (1) not held in private ownership; or (2) contained in the Coastal Plain study area.

Subsection 702(b) provides that the study shall include an identification in certain specified areas. The provisions are self-explanatory.

Subsection 702(c) provides that the study shall include the projected quantities of oil or natural gas that are or may be recoverable from the Arctic region under a range of world oil prices and economic conditions.

Subsection 702(d) provides that the study shall include an examination of the infrastructure needed, beyond what is already in place at Prudhoe Bay, in the trans-Alaska pipeline and the port and marine facilities at Valdez, to develop the oil and gas resources of the Arctic region under a range of development scenarios.

Subsection 703(a) provides for transmittal of the energy plan and other studies to the Congress. The provisions are self-explanatory.

Subsection 703(b) provides that the Secretary of the Interior shall not conduct the first lease sales authorized under title III and section 304 of the Act until twenty-one months after the date of enactment of the Act to permit adequate time for review and for action, if any, by the Congress on implementing the energy plan and studies authorized and directed under this title.

Subsection 703(c) provides that the Secretary of the Interior is authorized and directed to proceed with the development and implementation of final regulations to carry out the purposes of this Act, in accordance with the provisions of this Act, during the twenty-one month period required to develop and review the energy plan and studies required by this title.

Subsection 704(a) provides that pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974, the Secretary of Energy is authorized and directed to establish an energy research and demonstration grant program to promote and advance research, development, and commercialization in the areas of energy conservation and alternative energy sources. The energy research and demonstration grant program shall be funded out of revenues received under section 601(e).

Subsection 704(b) provides that the energy research and demonstration grant program authorized by this section shall have as its major purpose the development of energy conservation and alternative energy technologies which have the capacity to significantly reduce the Nation's growing reliance on imported oil by the end of the century.

TITLE VIII—EXPORT RESTRICTIONS

Subsection 801(a) provides that notwithstanding any other provision of law, no crude oil, with certain specified exceptions, produced from lands in the Coastal Plain may be exported from the United States, or any of its territories and possessions, subject to subsection (b).

Subsection 801(b) provides that crude oil subject to the prohibition contained in subsection (a) may be exported only if the President so recommends to the Congress after making and publishing certain specified express findings, and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

Subsection 801(c) provides that notwithstanding any other provision of this section or any other provision of law, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

COMMITTEE AMENDMENT

During the consideration of this measure, the Committee adopted an amendment offered by Senator Bumpers directing the Secretary of Agriculture to prepare and submit a report to the Congress on the potential for reforestation and afforestation of the Conservation Reserve program.

That amendment was adopted by the Committee by a unanimous voice vote. Rather than include the text of the amendment in the original bill, the Committee agreed that the amendment would be offered as a Committee amendment to the ANWR legislation when this matter is considered by the Senate.

The text of the amendment follows:

SEC. . REFORESTATION STUDY.—

Within six months of the date of enactment of this Act, the Secretary of Agriculture shall submit a report to the Congress on the potential for reforestation and afforestation of Conservation Reserve program lands.

The report shall include:

(a) an inventory of lands withdrawn from agricultural production under the Conservation Reserve program which are suitable for reforestation or afforestation;

(b) an evaluation of the potential environmental costs and benefits of a program to plant trees on such lands, including the potential for offsetting carbon dioxide emissions.

(c) an estimate of the economic costs and benefits of such a program; and

(d) an identification of the changes in law or regulation which would be necessary to permit implementation of such a program at the maximum feasible level.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Arctic Coastal Plain Competitive Oil and Gas Leasing Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: The Arctic Coastal Plain Competitive Oil and Gas Leasing Act.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on March 16, 1989.

4. Bill purpose: This bill would authorize a competitive oil and gas leasing program to be carried out by the Department of the Interior (DOI) on areas of the coastal plain of the Arctic National Wildlife Refuge (ANWR). The bill would require the DOI to include terms and conditions in leases to ensure protection of the environment of the coastal plain and would allow the DOI to remove any areas from leasing consideration that are found to be particularly sensitive to environmental damage.

Under Title III of the bill, the DOI would have nine months after the bill's enactment to promulgate regulations for the leasing program. The first lease sale would be limited to no more than 300,000 acres and would be held within 18 months of the issuance of regulations (27 months after the bill's enactment). The second lease sale would occur within three years of the initial sale with subsequent sales occurring every two years thereafter.

All receipts from bonus bids, rents, and royalties would be split evenly between the federal government and the State of Alaska. Most of the federal share of receipts from leases on ANWR would be allocated to the Land and Water Conservation Fund (LWCF), a new wetlands protection account, and the Department of Energy (DOE).

The bill stipulates that if any judicial action is brought against the federal government by Alaska challenging its share of receipts from leasing on the coastal plain, no lease sale would be allowed until a final nonappealable decision has been issued. If the receipt-sharing provisions of the bill are held invalid, the remainder of this bill would be void.

DOE would be required to prepare a national energy plan, including a projection of the nation's demand for energy resources, alternatives for meeting this demand, and estimates of the development potential of ANWR. Finally, the bill would authorize the creation of an energy research and demonstration grant program.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
DIRECT SPENDING EFFECTS					
Offsetting receipts:					
Estimated budget authority		−1,600	−1	−1	−1,000
Estimated outlays		−1,600	−1	−1	−1,000
Function 800 payments to Alaska:					
Estimated budget authority		800	(1)	(1)	500
Estimated outlays		800	(1)	(1)	500
Function 300 direct spending:					
Estimated budget authority		15	760	211	221
Estimated outlays		(1)	237	339	366
Total direct spending effect:					
Estimated budget authority		−785	760	211	−279
Estimated outlays		−800	237	339	−134
REQUIRING APPROPRIATIONS ACTION					
Administrative costs:					
Estimated authorization level	4	1	4	3	2
Estimated outlays	3	2	3	3	2
Title IX grants:					
Estimated authorization level		160	(1)	(1	100
Estimated outlays			40	104	41
Total, amounts requiring appropriations:					
Estimated authorization level	4	161	4	3	102
Estimated outlays	3	2	43	107	43

[1] $500,000 or less.

The costs of this bill fall within budget functions 300 and 800.

Basis of Estimate: For purposes of this estimate, CBO assumes that this bill would be enacted by October 1, 1989. Outlays have been estimated on the basis of spending patterns for similar programs and from information obtained from the DOI.

Title III would specify the terms and conditions for issuing and monitoring leases on the coastal plain. CBO estimates that the first lease sale would probably occur late in fiscal year 1991, abut 21 months after enactment of the bill. To derive receipt estimates, CBO has assumed that legal challenges would not prevent the DOI from issuing regulations and holding a lease sale and that the Congress would not act to prevent leasing as a result of the DOE energy plan authorized in Title IX. If Alaska brings suit against the federal government challenging the receipt-sharing provisions, it is unlikely that a lease sale would occur by 1991. Further, CBO has assumed that Section 318 of the bill, relating to the rights of the Inupiat Eskimos, would have no impact on the federal budget. If legal action arises out of the provisions of this section, additional federal outlays for damages could be incurred.

Based on an analysis by the DOI of potential tract values, CBO estimates that competitive bidding in the first lease sale would yield bonuses totaling approximately $1.6 billion. Annual rentals in 1992 and 1993 from leases issued in the first sale would be approximately $1 million. The second lease sale would occur in fiscal year 1994 and would bring in an additional $1 billion in bonus bids. Net of payments to Alaska, federal receipts would increase by $800 million in 1991 and by $500 million in 1994.

Royalties, which would begin only after oil production has actually begun, are unlikely to be received before fiscal year 2000.

Title IV would direct the Secretary of the Interior to administer the provisions of the bill through regulations, lease terms and other instruments to ensure that oil and gas-related activities have no significant impact on the environment or on fish and wildlife. Towards this end, the bill would require site-specific analysis and other measures to monitor and mitigate environmental effects. Upfront costs to promulgate regulations, prepare reports, and develop lease terms would be incurred beginning in fiscal year 1990. CBO estimates that the Bureau of Land Management and the U.S. Fish and Wildlife Service would require additional funding of about $3 million over fiscal years 1990 and 1991 for these purposes. The DOI would incur additional expenses through 1994 for siting and facility coordination plans as well as for oversight and basic environmental research required under Section 406. CBO estimates that these activities would cost about $7 million through fiscal year 1994. DOI expenditures for ongoing monitoring and enforcement activities are not expected to exceed $1 million a year beginning in 1993.

In addition, after the first lease sale the Environmental Protection Agency (EPA) would be provided with new direct spending authority of $5 million a year to enforce environmental laws. Of this amount, at least 25 percent would be transferred to the State of Alaska to offset its enforcement costs. CBO estimates that environmental enforcement would result in additional federal outlays of less than $1 million in fiscal years 1991 and 1992 and about $5 million a year thereafter.

Title V would establish liability and reclamation standards for federal lands affected by oil and gas-related activities. This title would also provide for the creation of the coastal plain liability and reclamation fund, which would receive all proceeds from a new $0.05 per barrel fee on all ANWR product entering the Trans-

Alaska Pipeline System (TAPS) as well as interest earned on fund investments and any amounts recovered from responsible parties. Collections and expenditures from the fund would not occur until after production begins in the next century and are thus not included in this estimate.

Title VI would provide that proceeds from ANWR-related transactions such as competitive bids, sales, royalties and rents be distributed evenly between the U.S. government and the State of Alaska. For purposes of this estimate, CBO has assumed that Alaska's share of gross receipts would be disbursed to the state through the permanent appropriation for payments under the Minerals Leasing Act in the year collected.

Of the federal share, 40 percent would be credited to a special account in the LWCF. In the year following such credit, an additional amount equal to the average appropriation from the LWCF over the five years previous to the initial ANWR credit (about $205 million annually) would also be deposited to the new special fund account from previously unappropriated LWCF balances. CBO has assumed that all of the sums credited to the special fund from ANWR receipts would be available in the following fiscal year. Amounts credited from unappropriated balances in the LWCF would be available immediately. Estimated new budget authority created by this provision would be about $530 million in fiscal year 1992 and about $205 million for each of fiscal years 1993 and 1994. (About 60 percent of the 1992 funding would be derived from ANWR receipts.) Associated outlays would be about $180 million in 1992, and about $700 million over the 1992–1994 period.

An additional 30 percent of the federal share would be credited to a new wetlands protection account, which would be used to finance new wetlands conservation projects undertaken by various federal agencies. Amounts credited to this new account would be available without further appropriation, resulting in new budget authority of about $250 million over fiscal years 1991–1994. Of this amount, $10 million is assumed to be made available beginning in fiscal year 1991 for preliminary work; most of the balance would be made available in the following year. Outlays from this provision are estimated to be about $50 million in fiscal year 1992, and total about $220 million through 1994.

Finally, 10 percent of the federal share would be used to fund DOE activities covered under Title VII. Such amounts would be subject to appropriation. The remaining 20 percent of the federal share would be credited as miscellaneous receipts to the Treasury.

Title VII would require the DOE to prepare an energy plan within 15 months of the bill's enactment. The plan would include a proposed statement of national energy policy, aggregate U.S. energy and oil demand projections, estimates of potential energy supplies and economically recoverable reserves on the coastal plain, and an identification of alternative energy sources. Also, the DOI would be required to study the development potential of ANWR. No lease sales would be allowed until 21 months after the bill's enactment in order to permit review of the studies' findings.

Based on information provided by the DOE, CBO estimates that the plans and studies authorized in this title would cost about $1.5 million over the two-year period after enactment.

In addition, Title VII would establish an alternative energy grant program to be funded with 10 percent of the federal share of ANWR-derived receipts. Assuming the amounts dedicated to the grant program are fully appropriated as they become available, the DOE would spend about $185 million over the 1992–1994 period for this purpose.

6. Estimated cost to State and local Governments: The State of Alaska would share 50 percent of all bonus bids, rentals and royalties realized from enactment of this bill. As a result, CBO estimates that payments to Alaska would increase by approximately $1 billion over the 1991–1994 period. In addition, after the first lease sale, the state would receive at least $1 million annually to offset some of its costs to enforce compliance with environmental laws.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa Gullo and Deborah Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this bill. The bill is not a regulatory measure in the sense of imposing government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Some additional paperwork may result from the enactment of this bill, as reported.

Executive Communications

The Secretary of the Interior testified before the Committee on March 6, 1989 regarding S. 406. A copy of that testimony is set forth below. Also set forth below are comments from the Departments of Energy, Commerce and Justice as well as the Environmental Protection Agency.

Statement of Manuel Lujan, Jr., Secretary of the Interior, Concerning S. 406, the Proposed "Arctic Coastal Plain Competitive Oil and Gas Leasing Act"

Mr. Chairman, it is a pleasure to be here today to testify on S. 406, the proposed "Arctic Coastal Plain Competitive Oil and Gas Leasing Act." I find it particularly appropriate that, at my first appearance before this committee as Secretary of the Interior, I have the opportunity to discuss one of the most important energy and environmental goals of the Bush Administration—the prudent and environmentally sound development of the coastal plain of the Arctic National Wildlife Refuge (ANWR).

I applaud the Committee's expeditious consideration of this legislation. The President's FY 1990 Budget plan assumes initial ANWR leasing in FY 1990, leading to environmentally prudent ex-

ploration and development in the coming decade. Accordingly, the Administration supports most of S. 406's main provisions, and we urge Congress to enact legislation to authorize environmentally sound ANWR mineral leasing as soon as possible. I must point out, however, that the Administration has several concerns regarding the permanent appropriation of certain ANWR leasing receipts and Land and Water Conservation Fund unappropriated balances. We also have significant questions regarding the proposed Reclamation Fund. I will explain these objections and other concerns later in my testimony.

The President's views on this overall issue are clear. During his recent visit to Alaska, he noted the importance of energy resources to economic development and national security, but emphasized that he "could never support development that failed to provide adequate safeguards for land and wildlife." Alaska's resources, he said, "in all her diversity, are indeed a sacred trust. But I am convinced that our natural resources can be developed without spoiling our environment. The plan to open the coastal plain of the Arctic National Wildlife Refuge meets these twin objectives." I have visited the area twice myself and, based on those experiences and my review of this issue, I wholeheartedly agree.

As you are aware, the coastal plain is a 1.5 million acre area along the northernmost part of the 19 million acre Arctic National Wildlife Refuge located in northeastern Alaska. The Porcupine caribou herd regularly uses portions of the coastal plain during the calving and insect-relief seasons and the coastal plain provides habitat for most of the refuge's muskoxen herd. Portions of the refuge also provide important fall staging areas for lesser snow geese, provide nesting habitat for waterfowl and shorebirds, and are frequently used by denning polar bears from the Beaufort Sea. Undeniably, the coastal plain is an area of important fish and wildlife resources.

Our task would be easy if the only resources of value in the coastal plain were fish and wildlife ones. This is not the case however. The coastal plain of ANWR is rated by geologists as the most outstanding petroleum exploration target in the onshore United States. Geological data indicate that there is a good chance that the area might contain one or more "supergiant" oil fields, perhaps on the scale of Prudhoe Bay.

We estimate that there is a 19 percent chance of finding economically recoverable oil (fields of more than 440 million barrels of oil) on the coastal plain. This is an exceptionally large field, even by Alaska standards, with a high probability for occurrence of oil and gas. If the coastal plain does contain economically recoverable oil, the average of all estimates of economically recoverable oil resources is 3.2 billion barrels. Based on this mean estimate, production from the area could reduce U.S. imports by nearly nine percent by the year 2005. There even exists a possibility that the area could yield 9 billion barrels of economically recoverable oil, rivaling the size of the Prudhoe Bay discovery.

The goal of this Administration is to recognize both the fish and wildlife and energy values of the coastal plain and to assist the Congress in fashioning legislation that will provide the American people with the opportunity to benefit from the area's potential

mineral wealth, while protecting its unique fish and wildlife qualities as well.

I appreciate this Committee's expeditious consideration of legislation that would accomplish this goal. Mr. Chairman, I know that S. 406 and the proposed amendments thereto are the product of the extensive work done by your committee in the last Congress. I am well aware of the many hours of testimony heard by this committee on this issue from environmental groups, the State of Alaska, industry groups, and Federal witnesses.

This extensive record, coupled with similar work done on the House side and the research and reports done within the Departments of the Interior and Energy, provides clear and convincing evidence that the coastal plain of ANWR should be opened, but only pursuant to legislation that provides strict environmental guidelines and safeguards governing all oil and gas activities in the area. While I have concerns with some of the provisions of S. 406, I believe that this legislation provides those guidelines and safeguards.

I know that some believe it will be too difficult to conduct oil and gas operations in an area where so many safeguards are mandated by law. However, we must acknowledge that ANWR has fish and wildlife values that are important to us as a nation and those values must be protected. There are others who believe that the only way to protect ANWR's fish and wildlife values is to prohibit oil and gas development there. Although such a prohibition might be the easiest way to protect those values, such a course would foreclose the nation's essential energy, economic, and security concerns. Therefore, I cannot agree that it is the right approach for the nation to take.

Mr. Chairman, as I know you are aware, domestic production of oil is falling. Production from the great oilfield at Prudhoe Bay, which supplies this nation with about 20 percent of its domestic production, is expected to begin declining in 1990. Net oil imports are expected to climb to over 8 to 10 million barrels a day by 1995—probably over half of our consumption—primarily because of rising consumption as our economy continues to grow, and because we are not finding and producing enough oil domestically. President Bush has repeatedly stated that sufficient energy supplies at reasonable prices are vital to the economic well-being of this country and to the preservation of our national security.

I know that some members of this committee argued against the opening of ANWAR in the last Congress, believing that the Reagan Administration had not placed enough focus on conservation and conversion to other energy sources. This Administration recognizes that a sound energy policy must look to all available sources. What is available and feasible will, of course, depend on economics and the state of technology.

President Bush has emphasized his commitment in this area. The President has committed that his Administration will encourage research and development of conservation measures and renewable resources such as geothermal, solar and wind power. Greater emphasis will be placed on the development and delivery to market of alternative fuels. We will work to remove regulatory barriers hindering the use of natural gas and other alternative

fuels whenever these options are economical. In the years ahead, as a result of strides in clean coal technology, this country will use more coal. We will also move ahead with the safe use of nuclear power.

However, the reality is that America will, for a long time, depend on oil and gas. The conservation and alternative energy measures that are expected to be economical within the next decade or so will help to reduce our import dependence. Indeed, the Department of Energy projections indicate 4 million barrels per day of additional conservation, but this will not be sufficient to eliminate our Nation's need for imported oil. Currently, our import level is climbing rapidly because of lower energy prices. In 1985, net imports accounted for 27 percent of the total petroleum products supplied in our nation. By 1988, net imports had jumped to 37 percent. By the year 1995, the Department of Energy forecasts that net imports could rise to over 50 percent. If the ANWR coastal plain is opened for leasing today, and a commercially producible discovery is made, production will not even begin until after the year 2000. Because of the long lead times needed to begin production in an area such as ANWR, it is imperative that we use the energy forecasts now to look ahead and plan for the next century.

Oil and gas production from ANWR's coastal plain would also provide a tremendous boost to the nation's economy. Excluding taxes and royalty payments, oil could cost as little as $8.50 per barrel to find and bring to market. The actual cost per barrel would depend on the amount and location of oil found. We estimate that a 3.2 billion barrel oil field would cost about $11.50 per barrel. The Department of Energy base case forecast for oil prices in the year 2000 is $28 per barrel, which provides a substantial margin in a world of uncertain oil prices. If one assumes that oil prices will average $28 per barrel while ANWR is producing, the nation could save over $50 billion by producing a 3.2 billion barrel oil field in the coastal plain of ANWR rather than buying imported oil. Potential savings of this magnitude cannot be ignored if we are serious about reducing our balance of trade and budget deficit.

During his campaign, the President pointed out that an oil and gas policy for America must do three things—

find more and conserve more;

apply our best technology and ingenuity to our energy problems; and

protect the environment in the process.

The prudent development of ANWR's coastal plain in an environmentally sound manner is a critical element of this policy. The legislation before this committee today can play an important role in this nation's energy policy. It will enable us to explore in one of the few remaining areas of high oil and gas potential in this country in a manner more highly protective of the environment than any oil and gas program ever conducted in this country.

As I mentioned at the beginning of my testimony, the Administration does have several concerns regarding the permanent appropriation and Reclamation Fund features of the bill, and other concerns with S. 406. Title V of the bill sets out the distribution formula for revenues derived from oil and gas activities in ANWR. I note that only ten percent of ANWR revenues would be deposited

into the general Treasury. The rest would be distributed to the State of Alaska, the Land and Water Conservation Fund, and to an earmarked account for wetlands protection. I also note that the bill would annually credit a special account within the Land and Water Conservation Fund with, in addition to 25 percent of ANWR revenues, an amount equal to the average annual appropriation from the Fund for the 5 fiscal years preceding the date on which ANWR revenues are received—approximately $200 million. After permitting use of up to 25 percent of this special account for State purposes, the bill would make the balance of the account available without further appropriation for Federal recreational land acquisition purposes. In effect, this would create an automatic, uncontrolled spending program for recreational land acquisition that could total several hundred million dollars over the ANWR leasing period. Moreover, the Department of Justice has advised that one feature of this section raises constitutional concerns. We understand that Justice is preparing a report to the committee articulating these and other concerns.

Mr. Chairman, you and the members of this committee are well aware of the budget crisis that this nation currently faces. This Administration has already recognized the need for more land acquisition and increased wetlands protection. The President's FY 1990 Budget plan requested $206 million annually for fiscal years 1990–1994 for recreational land acquisition under the Land and Water Conservation Fund. As important as these priorities are, however, they must take their place among other fiscal needs in determining how Federal dollars are allocated. They cannot simply be put on automatic pilot. The annual budget process is the most appropriate means that Congress and the Administration have for weighing our social, environmental, defense, and international needs against each other. We strongly object to language that would exempt several hundred million dollars from the budget process—much of which would not even come from ANWR receipts—and would also increase the Federal deficit by the same amount. The Federal revenues from oil and gas development on ANWR's coastal plain should go to the Treasury where they can best serve the American taxpayer and fund national priorities through the annual budget process. For all these reasons, I urge you to reconsider the provisions of title V.

Regarding the proposed Reclamation Fund, these provisions raise a number of significant legal, policy, and budgetary questions that the Administration has not yet had an opportunity to address fully. For example, it is not clear how Congress can direct that such an entity be established under State law; how such an entity can be subjected to GAO audit; whether investments and expenditures of the Fund should be subject to approval by the Secretary of the Interior; or whether revenues from a "private" Fund should be required to be provided to the Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service. In short, it is not clear whether the proposed Fund would truly be private or Federal, or if this entire section is needed in view of the bonding requirements of the bill. The intent of this provision must be clarified and its implications understood before the Administration can express a final position on it, but I can tell you that we object to the earmarking

of any unexpended balances of the fund—which could be enormous after 50 years of compound—to the Migratory Bird Conservation Fund.

I also am concerned by the fact that the "no significant adverse effect" environmental standard in S. 406 is undefined. As I stated before, I understand and support this committee's desire to adopt a strong protective environmental standard for the area. However, it is imperative that this standard be defined more precisely.

Without a clear definition of the "no significant adverse effect" standard, exploration, development and production in ANWR could virtually be halted. At a minimum, we can be certain that extensive litigation would result and the federal courts would be left to interpret what Congress intended when it set this somewhat ambiguous standard. I urge you to define this term so that both the Federal land manager and the operator have a clear understanding of what is expected of them. We would be happy to work with the committee in developing a workable definition.

I also question the need for the phased leasing provisions of S. 406. Section 203(c) prohibits the Secretary from offering more than 300,000 acres at the first lease sale. This restriction to only 20 percent of the coastal plain is excessively burdensome. I believe that the amount of acreage offered at any sale should be decided by the Secretary. Limited offerings could make it very difficult to achieve a planned consolidation of facilities and, at the same time, minimize impacts in the area. I question what environmental benefit is achieved by the limitation.

In addition, I believe that the bill's provision that the Secretary must require the application of the "best commercially available technology" for exploration, development and production activities is unnecessary. Mandating technology does not always assure you an environmental result. The "no significant adverse effect" environmental standard, if defined, together with the many other procedural and substantive safeguards in this legislation, provides adequate protection for the fish and wildlife resources of the ANWR coastal plain. I see no reason to mandate the technology an operator must use to meet this standard.

Finally, I note that the Department of Justice believes that S. 406 should contain provisions allowing the Attorney General to conduct an antitrust review of proposed leases, such as is provided in other mineral leasing statutes. We understand that Justice will provide the committee with more details and amendatory language on this issue.

We have also identified other technical concerns with S. 406 and will provide them to the committee before markup of the bill. All in all, however, I am well aware of the extensive work that has gone into the drafting of this bill and I congratulate the committee on having made great strides toward providing the prudent and environmentally sound development of the oil and gas resources of the coastal plain of ANWR.

Mr. Chairman, thank you for this opportunity to appear before you. I would be pleased to answer any questions that you or members of your committee might have at this time.

STATEMENT OF JAMES D. WATKINS, ADMIRAL, USN (RETIRED), SECRETARY OF ENERGY

Mr. Chairman, Senator McClure, and Members of the Senate Energy and Natural Resources Committee:

I appreciate the opportunity to provide written testimony on S. 406, a bill to authorize competitive oil and gas leasing of the Arctic National Wildlife Refuge (ANWR) coastal plain in an environmentally sound manner. The question of whether to begin the process of exploration, which could lead to the development and production of the oil and gas resources in the ANWR coastal plain is one of the most important energy policy issues now before the Congress and the Administration. As indicated by the President in his recent budget message, we should proceed to tap the oil and gas resources that may be present in the Arctic National Wildlife Refuge. In doing so, we should also heed the President's directive that we proceed judiciously with respect to the environment.

The Department's statement does not address the specific leasing provisions of the bill, but rather focuses on the relationship between ANWR's potential oil and gas resources and the Nation's energy problems and policies. We expect that the Department of the Interior will provide the Committee with specific comments on the bill's leasing provisions.

Since being confirmed by this Committee last Wednesday morning, I have had the opportunity to meet privately with the Governor of Alaska, Steve Cowper. Governor Cowper and I discussed extensively development of ANWR and the importance of moving as quickly as possible to enact legislation and establish a plan for responsible development. At this same meeting, the Governor indicated his view, which I share, that development of ANWR should be an essential component of the national long-range energy strategy which I hope to develop over the next year.

However, I would like to reiterate for the record what I told Governor Cowper. I would be strongly opposed to delaying consideration of S. 406, or delaying development of NAWR, until after this national energy strategy has been properly designed, reviewed, and put into place.

There is no question in my mind, after listening to the statements of Committee members on February 22nd, that one of my early tasks will be to address our nation's increasing dependence on foreign oil. No matter how I look at the issue of the energy security of the United States, no matter what study I review or what plan I look at to encourage the use of a new mix of transportation fuels, or improved energy efficiency and conservation, the increased availability of domestically produced oil will still be essential to our energy security well into the next century. We need the additional oil ANWR will provide. Mr. Chairman, I would like to submit for the record an article from today's Wall Street Journal entitled "Petroleum to Keep Rank as Most Valuable Commodity," which outlines some important isues in this area.

Without development of ANWR, along with many other initiatives, we will be unsuccessful in making America as energy independent as possible. Responsible, environmentally sound development of ANWR is one of the first tools I will need to be an effective

Secretary of Energy, and I can assure members of this Committee that ANWR will be part of this strategy, and early development of ANWR will be key to making the strategy work.

Leasing of the ANWR coastal plain is an integral and essential part of national energy policy

The ANWR coastal plain has been described as the most promising prospect for a major new discovery of oil and gas in the United States. Given current trends of declining domestic production, growing consumption, and rising dependence on oil imports from the Middle East, it is essential that we start to explore and develop this prospect without further delay. The potential for ANWR's oil resources to increase the U.S. reserve base by as much as 34 percent is an extraordinary opportunity that we cannot afford to postpone or delay indefinitely.

Clearly, development of ANWR's oil resources, even if they exceed the most optimistic estimates, will not be sufficient to fulfill the Nation's continuing need for oil. Indeed, the Nation must continue efforts to substitue other fuels for oil in many applications, to make additional conservation gains, and to prepare for potential interruptions in oil supplies.

Nevertheless, the fact remains that the Nation will remain heavily dependent on oil, particularly in the transportation sector, well into the next century. If we do nothing to stem the decline in domestic oil production, through responsible exploration and efficient recovery, then we will be compelled to meet our oil demand through growing imports, which will be supplied increasingly from insecure sources. Where the potential exists to develop new oil resources in a cost-effective and environmentally sensitive manner, it is essential that the Federal Government allow efforts to realize that potential.

Despite lower oil prices today, current energy trends raise serious concerns

The United States today enjoys the rewards of successful efforts over the past decade to reduce consumption of energy in general and oil in particular, to increase production of oil and other energy sources outside of OPEC, and to deregulate domestic energy markets. Today, oil supplies are abundant, and prices are lower than they were in the early 1980s. To many Americans, the gasoline lines and high prices experiences ten years ago are only a fading memory. However, disquieting trends of growing oil consumption, declining domestic production, and increasing dependence on oil imported from the Middle East indicate that today's favorable situation will not last forever.

The volatile and generally lower oil prices over the past few years have made it difficult for producrs of high-cost U.S. oil reserves to compete in the world market. Thousands of low output wells in the United States have been temporarily or even permanently abandoned, and many high-cost development projects have been shelved. The number of active oil and gas drilling rigs in the United States has declined to below 800, compared to 2,000 rigs operating in 1985 and 4,000 in the peak year of 1981.

This reduced drilling activity has been insufficient to compensate for the natural decline in production from existing reserves. Consequently, domestic oil production today is about 1 million barrels per day lower than in 1986. Furthermore, production from the Prudhoe Bay field in North Alaska, which provides about one-fifth of total U.S. crude oil production, is beginning to decline.

According to projections in the Energy Information Administration's *Annual Energy Outlook,* total U.S. oil production (including crude oil, natural gas liquids, condensates, and refinery gains) is likely to decline from the recent peak of 11.3 million barrels per day in 1985 to about 8–9 million barrels per day by the year 2000. At the same time, domestic oil consumption is projected to increase by 5 to 15 percent. U.S. net imports therefore are projected to grow from their lowest recent level of 4.3 million barrels per day in 1985 to 9–12 million barrels per day in 2000, accounting for one-half or more of domestic oil consumption. Although past experience with oil market projections indicates that these trends are by no means inevitable, it is important to recognize the strong likelihood of rising U.S. imports.

Many other non-OPEC countries also are likely to experience declining production and growing consumption over the next decade. As the United States and other countries import more oil between now and 2000, they will increasingly turn to OPEC suppliers—in particular those located around the Persian Gulf, where the bulk of the world's oil reserves is located.

Of the 8–10 million barrels per day of spare production capacity currently available in the world, about two-thirds is in Saudi Arabia and other Persian Gulf countries. Moreover, the Persian Gulf region holds about 66 percent of the world's oil reserves. OPEC countries outside this region hold another 11 percent of world reserves. The United States has only about 3 percent of total worldwide reserves. Not only do Persian Gulf and other OPEC countries possess the largest oil reserves in the world, but their reserves also are the least expensive to produce.

Department of Energy projections indicate that OPEC's share of the world market will increase to 50 percent by 1995, and that the Persian Gulf share will reach between 35 and 40 percent. These market shares would be significantly higher than today's levels of 42 percent for OPEC and 28 percent for the Persian Gulf. In fact, the trends indicate that by the year 2000, the Persian Gulf countries' share of the world market may approach the historical peak level of 45 percent recorded in 1976. Thus, as we approach the end of the century, we may no longer see the surplus oil production capacity which is currently holding oil prices down.

OPEC oil supplies generally are controlled by governments rather than by private companies, and these governments coordinate their oil production and pricing policies. Over-reliance on OPEC suppliers can subject the world economy to the damaging effects of high prices caused by cartel production cutbacks. There are additional risks from over-reliance on Middle Eastern oil suppliers. Revolutions, politically motivated production cuts, regional wars, or conflicts instigated by outside powers could disrupt oil supplies, increase prices, and inflict economic hardship on oil-consuming coun-

tries throughout the world. Vulnerability to such threats could affect the ability of the United States to conduct its foreign policy.

Increasing worldwide dependence on Persian Gulf and other OPEC oil suppliers could increase the nation's vulnerability to price spikes and supply disruptions. Our situation at the turn of the century could be particularly precarious.

The Nation's energy policy must be founded on the sensible and economical use of all available energy resources

In preparing for our future energy needs, we must acknowledge that the state of our economy and our national security depend in part on the availability of adequate supplies of energy at reasonable prices. At the same time, we must seek a balance among energy needs and concerns for the overall economy, environmental quality, free and fair competition, and manageable Federal budgets.

There is no single government action that alone can have a sufficient impact to resolve the Nation's energy problems. A sound energy policy must be broadly based, making use of all available fuels and all cost-effective actions. This must include emergency preparedness, fuel switching, conservation, and domestic production.

Strategic oil stockpiles provide a defense against short-term disruptions

Recognizing that oil supplies are vulnerable to disruption, the United States has built a very substantial strategic stockpile of oil. The Strategic Petroleum Reserve (SPR) now contains 563 million barrels of oil that can be drawn down and distributed at a rate of about 3.25 million barrels per day. Germany and Japan also have built large strategic oil stockpiles. Many other countries have similar programs, although most of them lag behind the United States, Germany, and Japan. Worldwide stockdraw capabilities would be sufficient to respond to supply disruptions of the duration and magnitude that occurred during the 1970s.

Over the longer term, the nation must turn to energy sources other than oil

While emergency oil stocks can dampen the economic effects of short-term supply disruptions, they cannot overcome the effects of longer disruptions or the long-term exercise of market power by a small group of oil-producing counties. Our national energy policy therefore must include a number of long-term actions that can help provide alternatives to oil. Some of the actions being pursued by the Administration include:

Reforming Natural Gas Regulations.—Natural gas is an abundant and clean-burning fuel that has not yet met its full potential, largely because of excessive government regulation. Some progress has been made, both by Congress and by Federal regulatory bodies (for example, legislation repealing restrictions on fuel choices and regulations promoting open access to transportation). Still, more remains to be done. In particular, the President has said that, at long last, Federal controls on natural gas at the wellhead should be abolished.

Developing Clean Coal Technologies.—Coal is playing an increasingly important role in supplying the Nation's demand for electricity. There are important environmental concerns, notably acid rain and the threat of global climate change that must be addressed in connection with the use of this resource, however. The Department of Energy and industry are jointly funding projects to demonstrate innovative new technologies for reducing emissions from coal-fired boilers and increasing the efficiency of coal combustion processes.

Improving Opportunities for Nuclear Power.—Nuclear power has been the fastest growing energy source in the United States, but the last order for a U.S. nuclear plant was placed in 1978—thus this growth will soon stop. The Bush Administration understands the importance of improving the licensing process for nuclear plants, minimizing unnecessary delays and costs, improving safety, and providing facilities for waste disposal.

Funding Research and Development of Renewable Energy Technologies.—Renewable energy sources, other than hydroelectric power, currently provide only a small part of our energy needs. This Administration supports basic research efforts which could help lower the costs of solar and other renewable energy technologies so that they might be able to play a large role in the future.

Funding Research and Development of Energy Conservation Technologies.—The Administration supports basic research and development of a wide range of energy conservation technologies in all energy-using sectors, as well as research in basic science that may lead to new energy efficient technologies. Individual technological advances include development of improved windows, lighting systems, engines, and industrial processes. The Department also conducts programs to support use of conservation technologies.

Energy Conservation must continue, but conservation alone cannot meet all of our future needs

The United States has made major strides in improving its energy efficiency. Since 1973, fuel efficiency of new cars and trucks has increased by 87 percent, growth in residential energy use has been kept to less than 5 percent despite over a 20 percent increase in the number of households, and industrial energy use per dollar of economic output has declined by more than 20 percent.

The overall decline in oil use since 1973 has been substantial. With the exception of transportation all other energy using sectors showed reductions in oil consumption. These sectors are using about 2 million barrels per day less than in 1973. Today, the Nation uses only about 0.5 million barrels of oil per day to generate electricity and only about 1.3 million barrels per day in the residential and commercial sectors combined. Transportation and other motor fuel uses account for over two-thirds (more than 11 million barrels per day) of U.S. oil consumption. Oil use in the industrial sector is about 4 million barrels per day, of which over half is used for feedstocks rather for energy uses, *per se*..

Although energy conservation improvements are expected to continue, U.S. oil dependence will increase through the next decade. If energy efficiency did not increase, our oil use would likely grow from 17 million barrels per day to 22.6 million barrels per day by the year 2000. However, DOE projections are based on the assump-

tion that additional oil conservation of about 4 million barrels per day will be achieved, reducing year 2000 oil consumption to about 18 to 19.5 million barrels per day. But this is still 1 to 2.5 million barrels per day more oil than we currently use. This additional oil use is expected to be necessary to meet the needs of an expanding economy. When declining U.S. oil production is taken into account, we expect that oil imports will be at least 2 and perhaps as much as 6 million barrels per day more in 2000 than today.

Efficiency improvements and substitution of other types of energy for oil are vital parts of the Nation's energy strategy. But improved efficiency, fuel switching, and alternative fuel use will be insufficient, by themselves, to reduce U.S. oil import dependency over the next decade. Despite the contribution of conservation, significant oil import dependency will remain.

Full and efficient use of domestic oil resources is imperative

Given the conclusion that the U.S. economy will continue to depend heavily on oil for many years to come, it is vital that the Nation seek to obtain the most from its domestic oil resource base. Domestic oil production plays a very important role in the U.S. energy balance, providing about one-quarter of total energy consumption. Yet today we use more oil in the transportation sector alone than we produce domestically. Furthermore, unless oil prices increase dramatically, U.S. oil reserves and production are expected to decline further.

There is a balanced program of cost-effective actions that can be taken to help stem the decline in domestic oil production. One importation action would be to allow responsible exploration and development of the country's best domestic oil prospects. Many of the more accessible oil resources onshore in the lower 48 States already have been developed. Although there remains a significant potential for recovering more oil out of these mature areas, the potential for discovery of large new oil fields in these areas is slight. In fact, 80 percent of all additions to the U.S. reserve base in recent years are the result of extensions and revisions to existing reserves. Discoveries of new fields account for the remainder. The last major new discovery in the United States was the 10-billion-barrel Prudhoe Bay field, discovered in 1968.

In order for companies to make important additions to U.S. oil reserves, the government must provide the proper environment by:

allowing companies to explore and develop frontier areas on Federal lands, particularly in Alsaka and on selected portions of the Outer Continental Shelf;

assuming a leadership role in research, development, and technology transfer of enhanced oil recovery techniques focused on the economical recovery of the oil and gas resources that are contained in known reservoirs; and

ensuring that U.S. taxes do not discourage the development of U.S. oil resources, a consideration recognized in the President's recent oil and gas tax proposals.

Environmentally sound exploration and development of ANWR's Coastal Plain can provide substantial benefits to the Nation

The bottom line is that the United States needs a balanced approach to energy. We need to encourage conservation and switching to fuels other than oil, and we need to encourage development of domestic oil resources, whenever such measures are economical and consistent with sound environmental protection practices. Allowing companies to conduct environmentally sound exploration and development of ANWR and to produce the oil if they find it to be economic is a logical and necessary part of our balanced energy policy.

The Department of the Interior estimates that the ANWR Coastal Plain—located just 65 miles to the east of Prudhoe Bay—may contain 4.8 to 29.4 billion barrels of oil in place. Estimates of recoverable oil range from 600 million to more than 9.2 billion barrels—a potential 34-percent increase over the current U.S. reserve estimates of 27 billion barrels.

The Coastal Plain of ANWR also could contain 11.5 to 64.5 trillion cubic feet (tcf) of natural gas in place. There are no estimates available as to whether these gas supplies could be economically developed, but if they were found to be economic, they could make a very substantial contribution to total U.S. gas reserves.

Experience shows that it takes more than 10 years from initial discovery to first production of Arctic oil and gas. Consequently, any production from the ANWR area is not likely to start before the end of the century. By then production of crude oil from the United States is expected to decline from the present 8.0 million barrels per day to less than 6 million barrels per day. At the same time, Alaskan oil production will decline from the current 2.0 million barrels per day to 0.9 million barrels per day.

If ANWR's oil reserves approach the size of the reserves at Prudhoe Bay, ANWR eventually could provide as much as 1 to 1.5 million barrels per day of domestic oil production, thus offsetting part of the production decline in the lower 48 States and at Prudhoe Bay.

The oil industry has performed remarkably well for over a decade at Prudhoe Bay. The industry has implemented technological, environmental, and operational practices that have safely developed not only Prudhoe Bay, but also the Kuparuk, Lisburne, Milne Point, and Endicott fields. For over 20 years, extensive exploratory drilling and thousands of seismic surveys in the Central Arctic area have been conducted without significant adverse impacts on the environment or wildlife. Such a record provides encouraging support for authorizing exploration and development of the ANWR coastal plain.

A report released recently by the Office of Technology Assessment documents some of the improvements in technologies and operating practices which have lowered the costs and at the same time reduced the environmental effects of Arctic oil development. The report also discusses various estimates of the recoverable oil reserves in the ANWR coastal plain, concluding that the economic prospects for development of ANWR oil may be more favorable than originally estimated. I think that this report provides some

additional evidence that America may be able to develop the oil resources in ANWR's coastal plain in an economical and environmentally sound manner.

It should be remembered that exploration and production in ANWR could provide substantial economic as well as energy benefits. First, exploration and development would generate jobs, particularly in the currently depressed oil sector. The domestic oil drilling and related industries, which have been severely affected by the 1986 oil price collapse, would experience increased demand for their services. The oil industry estimates that it has spent about $36 billion on development of Alaska's North Slope oil fields since 1974, including $8 billion on the construction of the Trans-Alaska Pipeline. Since 1980 all 50 States have benefits from oil industry purchases of equipment and supplies for the Alaskan oil fields and to transport the oil to refiners.

If large oil and gas reserves are found on ANWR's coastal plain, production of these reserves could provide additional economic benefits throughout the country. Consumers would benefit from the availability of these secure supplies and could even benefit from lower oil prices.

Producing American oil in ANWR could be much less expensive than buying foreign oil. Excluding taxes and royalties, a 3.2 billion barrel field in ANWR (the Interior Department's mean estimate) would cost an estimated $11.50 per barrel to find and produce. If oil prices rise to $30 per barrel early in the next century, production of ANWR oil would result in a net national saving of over $12 per barrel produced.

Net imports of crude oil and refined petroleum products accounted for $38 billion, or more than one-quarter of the total U.S. merchandise trade deficit of $137 billion in 1988. As oil prices and oil imports increase over the next decade, the U.S. oil import bill can be expected to grow. Oil production from ANWR's coastal plain could reduce substantially what we pay for imports. For example, under the most optimistic assumption that production of 1 to 1.5 million barrels per day could be attained, and if oil prices should rise to $30 per barrel early in the next century, production from ANWR could reduce the U.S. import bill by $11 to 16 billion per year.

Oil producers provide government revenues through payments of lease bonuses, royalties, and income taxes. If substantial quantities of oil are found on the ANWR coastal plain, production of these resources could provide significant revenues for the Federal, State and local governments.

Given the potential for ANWR oil production to contribute to meeting the Nation's projected energy needs early in the next century, and given the large economic benefits that could be derived from ANWR development, it is important that the Government open up this area for exploration and development activities. The environmental consequences of development can and must be mitigated, but we cannot afford to close off access to our best domestic oil and gas prospect. We know that our economy will be heavily dependent on oil early in the next century, but if we do not act soon, any commercial quantities of oil that may be found on the ANWR coastal plain will not be available then. The Department of Energy

therefore strongly supports Congressional approval of legislaltion, such as S. 406, that would allow leasing of the ANWR coastal plain.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 9, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on S. 406, the "Arctic Coastal Plain Competitive Oil and Gas Leasing Act." This legislation would authorize oil and gas leasing and development through a competitive bidding procedure on the coastal plain of the Arctic National Wildlife Refuge (ANWR).

While the Department of Justice defers to other interested federal agencies on the overall need for, and objectives of, this leasing program, we recommend the following amendments to the bill concerning its constitutional and antitrust implications. First, we recommend that the proposed leases be subject to antitrust review by the Department of Justice. Such review would not unduly delay the Secretary's decision on issuance of oil and gas leases, and would ensure that their issuance does not create undue competitive concerns. Second, we note that certain provisions, relating to the designation of a private party to administer the Coastal Plain Liability and Reclamation Fund and the allocation by congressional committees of federal oil and gas lease revenues, are constitutionally flawed. Finally, we suggest that section 214 of the bill be amended to reflect more clearly the litigative authority of the Attorney General.

The bill authorizes initiation by the Secretary of the Interior of oil and gas leasing, development and production on the ANWR coastal plain, consistent with federal and state environmental laws. Section 204 authorizes the Secretary to grant oil and gas leases to the highest responsible qualified bidder by sealed competitive bidding. Section 205 establishes terms and conditions for issuance of oil and gas leases. Section 206 requires oil and gas lessees to submit to the Secretary for approval a plan for oil and gas exploration and a plan for development and production. Under the bill, proposed plans are to be published with an opportunity for public hearings, and the Secretary is to determine whether the plan is consistent with the Act. He shall issue a permit or return the plan with a statement of modifications necessary for approval.

ANTITRUST CONCERNS

The Department of Justice believes that the bill's approach of determining lease sale purchasers by competitive bidding is appropriate. The bill does not, however, provide for an opportunity for the Attorney General to conduct an antitrust review to determine the likely effects on competition of proposed lease sales. Such review is provided for in other statutes governing lease sales of oil, gas and mineral rights. For example, the Outer Continental Shelf Lands

Act Amendments of 1978 provides that proposed crude oil and natural gas leases are subject to antitrust review by the Attorney General for a determination of whether the proposed lease would "create or maintain a situation inconsistent with the antitrust laws." [1] The Federal Coal Leasing Act Amendments Act of 1976 also requires antitrust review by the Department of Justice of coal leases,[2] and the Naval Petroleum Reserves Act authorizes antitrust review by the Department of sales of oil shale reserves.[3]

The Department of Justice has considerable experience with the standard contained in these leasing statutes; it closely approximates the standard for reviewing mergers and acquisitions under section 7 of the Clayton Act. Accordingly, we recommend inclusion of a similar review mechanism here. The Department's experience, along with court precedents interpreting section 7 in merger cases, should help facilitate Justice review of leases under this legislation.

An antitrust review provision is particularly appropriate in this bill because the market for oil reserves in Alaska is concentrated and, hence, lease sales to entities currently holding oil reserves could have adverse competitive effects. While the magnitude of oil and gas reserves in the coastal plain of the ANWR is largely unknown, it has been recognized that oil and gas reserves could be substantial.[4]

We suggest that the Attorney General have 30 days from the date of notification by the Secretary to conduct the review and submit his report and recommendations. This approach conforms to comparable law and should help ensure complete and proper analysis of all competitive issues while not unduly delaying approval of proposed lease sales. Of course, nothing would preclude completion of this task in a shorter time when that is possible and, indeed, the Department's review of other proposed leases is generally completed in considerably less than thirty days.

While competitive concerns are important, they should not always outweigh other factors required to be taken into consideration by the Secretary in making his determination under this Act. Thus, we recommend that the Secretary be permitted to approve a lease or refuse to impose recommended terms or conditions even where he receives adverse competitive advice from the Attorney General. In such instances, he should be required to make specific findings that approval of the lease is necessary to carry out the purposes of the Act and is in the public interest, and that there are no reasonably available alternatives to achieve the statute's purpose that would have significantly less anticompetitive effects. This recommended approach is similar to the antitrust review provisions for coal lease sales contained in the Federal Coal Leasing Amendments Act,[5] and for oil and gas lease sales contained in the Outer Continental Shelf Lands Act.[6]

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[1] 43 U.S.C. § 11337(c).
[2] 30 U.S.C. § 1184(*l*)2.
[3] 10 U.S.C. § 17430(g)(2).
[4] See 1988 Legislative and Administrative Message from the President, 134 Congressional Record S76, 86 (daily ed. Jan. 26, 1988); letter from Donald P. Hodel, Secretary of the Interior, to Honorable Gerry E. Studds, Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries (April 20, 1988).
[5] 30 U.S.C. § 184(*l*).
[6] 43 U.S.C. § 1337(c)(3)(B).

Finally, we recommend that a new section be added to clarify that the approval of lease sales does not impart any implied antitrust immunity for subsequent actions by the lessees, and that the antitrust laws remain fully applicable to the acts of the lease holders.[7] We also recomend a provision in the Act that states that an "antitrust review shall be deemed an antitrust investigation for purposes of the Antitrust Civil Process Act (15 U.S.C. §1311)." This provision will ensure the Department's ability to obtain information necessary to our analysis through process normally employed in civil investigations. We enclose language that would effectuate these recommended changes.

CONSTITUTIONAL AND OTHER CONCERNS

Section 403 also presents constitutional problems. It states that a Coastal Plain Liability and Reclamation Fund ("Fund") "is hereby directed to be established" as a non-profit corporation under Alaska law. The Fund "shall be established and administered by the holder of the Trans-Alaska pipeline right-of-way under regulations prescribed by the [Interior] Secretary." The operator of the Trans-Alaska pipeline shall collect fees on certain oil and gas shipments through the pipeline, which fees shall be placed into the Fund. "The revenues in the Reclamation Fund shall be available, with the approval of the [Interior] Secretary," for specified Arctic Coastal Plain reclamation projects. Section 403 appears to direct a private party, the owner of the Trans-Alaska pipeline right-of-way (the Alyeska Corporation), to "establish" a Fund and to "administer" it by determining (subject to the Secretary of the Interior's approval) the allocation (for reclamation projects) of federal assessments placed in the Fund. Accordingly, section 403 runs afoul of the constitutional principle that "the performance of a significant governmental duty exercised pursuant to a public law"—a category which encompasses "determinations of eligibility for funds"—may only be performed by "Officers of the United States," appointed in accordance with the AppOintments Clause of the Constitution, Art. II, sec. 2, cl. 2. *Buckley* v. *Valeo,* 424 U.S. 1, 140–141 (1976). The congressional designation of a specified private entity to administer the Fund and allocate its monies is at odds with the requirements of the Appointments Clause.[8]

Accordingly, we would oppose this section of the bill as currently drafted.

We also note that the current version of section 502(c) raises constitutional problems. That section states that the Congressional appropriations committees "shall allocate the funds from * * * [a] special account" into which federal oil and gas lease revenues are placed (section 502(c)(1)); "[i]n allocating [such] funds," the committees "shall ensure that each [of several named] agenc[ies] receives a fair and equitable share" (section 502(c)(3)). By involving congressional committees in the distribution of a pool of already existing federal funds, section 502(c) runs afoul of the constitutional princi-

[7] Similar provisions are contained in other leasing statutes, e.g., 30 U.S.C. §184(*l*)(3).

[8] Under the Appointments Clause, "principal" Officers are to be appointed by the President, subject to the advice and consent of the Senate, while Congress may vest the appointment of "inferior" Officers in the President, in the Heads of Departments, or in the courts.

ple that Congress can alter "the legal rights, duties, and relation of persons" outside the legislative branch, including executive branch officials, only by following the constitutionally-specified procedures for legislation, viz., passage by both Houses of Congress and presentation to the President. *INS* v. *Chadha*, 462 U.S. 919, 951–967 (1983). We therefore recommend that section 502(c) be deleted.

Finally, we recommend that the language "or a United States Attorney" be struck from line 2 of section 214(b), since it impinges upon the right of the Attorney General to make final litigation decisions and in his discretion delegate that authority to the United States Attorneys for certain types of matters.

CONCLUSION

In summary, while the Department defers to other interested federal agencies on the overall merits of this bill, we strongly urge the adoption of the amendments that we have recommended.

The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

THOMAS M. BOYD,
Assistant Attorney General.

Enclosure.

DEPARTMENT OF JUSTICE RECOMMENDED AMENDMENT TO SECTION 204 OF H.R. 3601

SEC. 204. * * *

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(c) ANTITRUST REVIEW.—

(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General thirty days to review the results of such lease sale, except that the Attorney General may agree to a shorter review period.

(2) The Attorney General may conduct such antitrust review on the likely effects the issuance of such leases would have on competition as he deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if he makes specific findings that approval of the lease is necessary to carry out the purposes of the Act, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, he must notify the lessee and the Attorney General of his findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General or any other Federal department or agency to secure informaiton, conduct reviews, make recommendations, or seek appropriate relief.

(d) SECRETARY'S APPROVAL FOR SALE, EXCHANGE, ASSIGNMENT, OR OTHER TRANSFER OF LEASES

No lease issued under this subchapter may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

(e) NO ANTITRUST IMMUNITY OR DEFENSES

Nothing in this subchapter shall be deemed to convey to any person, association, corporation, or other business organization immunity for civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f) DEFINITIONS

As used in this section,

(1) "antirust review" shall be deemed an "antitrust investigation" for purposes of the Antitrust Civil Process Act (15 U.S.C. 1311).

(2) "antitrust laws" means those Acts set forth in Section 1 of the Clayton Act, 15 U.S.C. § 12, as amended.

STATEMENT FOR THE RECORD BY DR. PAUL FREEDENBERG, UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

Mr. Chairman, as you requested, I am pleased to provide the Department of Commerce views on the threat to the national security posed by rising levels of oil imports and how oil and natural gas production from the coastal plain of the Arctic National Wildlife Refuge [ANWR] could help alleviate this threat. In addition to this statement, the Department will also provide to the committee in the near future a letter which discusses other aspects of S. 406.

The Department of Commerce's recent investigation on imports of petroleum, conducted pursuant to section 232 of the Trade Expansion Act, found that the maintenance of U.S. access to sufficient supplies of petroleum is essential to our economic security, foreign policy flexibility, and defense preparedness. Given these

factors, the Secretary of Commerce found that petroleum imports threaten to impair the national security.

Secretary C. William Verity, then Secretary of Comemrce, made a number of recommendations on how to enhance U.S. energy security, which included urging the Congress to permit environmentally sound oil exploration and development of the ANWR in Alaska. On January 3, 1989, then President Reagan approved the Commerce finding and the recommendations.

The leasing and development of the oil and natural gas resources of the coastal plain of the ANWR would represent an important step in enhancing U.S energy security if it can be done in an environmentally sound manner. Exploration of and production from the ANWR would serve to limit our growing dependence on oil imports.

The Department of Commerce's report on its section 232 investigation on the effects of oil imports on the national security reached a number of conclusions on the impact of growing U.S. oil imports:

—It concluded that by the mid-1990's and beyond the United States may be importing about half or more of its oil consumption.

—To the degree that the United States and other consuming nations import more oil in the future, it is projected they will turn increasingly to the OPEC countries.

—The United States' growing dependence on OPEC oil will result in increased imports from the oil-producing countries in the Persian Gulf. These producing countries have the largest amount of surplus oil production capacity and reserves.

—Finally, dependency on a small number of suppliers located in this volatile region could make the United States vulnerable to oil supply disruptions or cartel manipulation of production and price.

The report also pointed out the important trade considerations associated with the exploration and development of the coastal plain of ANWR. The report stated that "[I]f Congress decided today to allow exploration and development, the anticipated output after the year 2000 could potentially be as much as 1 to 1.5 million barrels per day." If oil prices rise to $30 per barrel early in the next century, the trade deficit could be reduced by $11 to $16 billion per year.

U.S. oil production has been declining since 1986. At the same time, petroleum imports have been increasing for the past 3 years. In 1988, net imports reached 6.4 million barrels per day. Moreover, U.S. oil imports are likely to increase in the years ahead because domestic reserves of economically recoverable oil are declining.

The most promising currently known onshore prospect for major new oil fields in the United States is the coastal plain of the ANWR. The 1.5 million acre coastal plain has the potential of up to 9 billion barrels or more of recoverable oil according to estimates made by the Department of the Interior. The coastal plain is 65 miles east of Prudhoe Bay—the largest oil-producing field in the United States. Consequently, it can be easily integrated into the Trans-Alaska pipeline delivery infrastructure.

Early congressional passage of legislation which would allow the exploration and development of the coastal plain is important for a number of reasons:

—There is a long lead time in Alaska between exploration and commercial production.

—If Congress decided in 1989 to allow exploration and development of the coastal plain, large-scale oil production would not occur until the year 2000.

—Alaskan oil production from Prudhoe Bay is expected to peak in the near future and a decline is expected not later than the early 1990's.

—Finally, oil from the coastal plain area could help to limit future declines in Alaskan production and reduce the need for increased imports during the 1990's.

There has been no change in the U.S. energy situation since the issuance of our section 232 report. Domestic production continues to decline and oil imports keep rising. In view of these facts, the Department would support legislation which would authorize competitive oil and natural gas leasing and development of the coastal plain of the ANWR in a manner consistent with the protection of the environment.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 13, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of February 22, 1989, requesting a written statement of EPA's views on S. 406, a bill to authorize competitive oil and gas leasing and development on the Coastal Plain of the Arctic National Wildlife Refuge in a manner consistent with protection of the environment, and related amendments 3, 4, and 5.

Our statement for the hearing record is enclosed. If I can be of further assistance, please let me know.

Sincerely,

JENNIFER JOY WILSON,
Assistant Administrator for External Affairs.

EPA COMMENTS ON S. 406, A BILL TO AUTHORIZE COMPETITIVE OIL AND GAS LEASING ON THE ARCTIC NATIONAL WILDLIFE REFUGE COASTAL PLAIN AND AMENDMENTS 3, 4, 5

S. 406 and amendments 3, 4, and 5 together would authorize oil and gas development in the Arctic National Wildlife Refuge (ANWR) with safeguards to protect the environment of the Refuge, including air and water, fish and wildlife, the arctic ecosystem, habitat, other natural resources such as wetlands, and the marine and coastal environment. Thus the bill and amendments are consistent with the policy of this Administration as enunciated by President Bush in his February 9, 1989 address to a joint session of the Congress.

EPA supports that Administration policy; our comments are confined to suggested measures to enhance or clarify the environmental protection provisions of the proposed legislation.

To begin with a general comment, it is our view that successfully achieving the Administration's aims hinges on inclusion of amendments 4 and 5, which contain provisions essential to making S. 406 meet the Administration's environmental protection standard. Amendment 4 clarifies that NEPA would remain applicable to all phases of the oil and gas development process and that no Federal or State environmental protection law would be superseded by any provisions of S. 406. Amendment 5 contains a number of important specific environmental protection requirements.

ROLE OF EXISTING LAWS AND REGULATIONS

Since reviewing the draft LEIS on ANWR oil and gas development, EPA has consistently voiced its belief that all existing environmental laws must remain applicable to any development in the 1002 Area. EPA is concerned that under S. 406 the Secretary's determination of any activity's consistency with all applicable Federal and State laws and regulations would supersede that of the appropriate agency having pertinent authority. Amendments 4 and 5 address EPA's longstanding concern that NEPA and other environmental laws administered by other Federal and State agencies apply to ANWR activities, and they should be adopted.

NO SIGNIFICANT ADVERSE EFFECT STANDARD

S. 406 sets an environmental standard of no "significant adverse effects." That phrase is not, however, defined in the bills. The omission of a definition is of concern to EPA in that the standard is subject to considerable interpretation.

MINIMIZATION OF IMPACTS THROUGH LEASE SALES

Section 203(c) would allow only 300,000 acres to be leased in any one lease sale. We question the reason for that limitation. We recommend that the identification of tracts to be offered in subsequent lease sales take into account alternatives which would minimize cumulative impacts, for example, through comprehensive planning and siting.

We believe that amendment 4, subsection 203(b) (providing for the application of NEPA to oil and gas operations on the Coastal Plain) would operate to ensure completion of a comprehensive siting plan to minimize adverse environmental effects before leasing begins.

MITIGATION AND RECLAMATION

Several potentially beneficial mitigation measures appear in the bill, including provisions for performance bonding and a reclamation fund. Section 207(b)(2) establishes performance bonds to provide for reclamation of the lease site, as well as for rapid and effective cleanup and minimization of harm from any spills. The size of the bond is limited to $1.5 million "for all development and production activities on the Coastal Plain." The bond requirement would appear to set a cap for each lessee of $1.5 million for reclamation

and cleanup at all development and production operations on all leases held by an individual lessee. We are concerned that if the purpose of the proposed bonding is to provide incentive to perform reclamation, the maximum bonding requirements fall far short of the potential costs of reclamation. We believe that the bill should not set a ceiling on the amount of the performance bond required. This should be determined by the Secretary of the Interior.

Second, other reclamation monies (to be accumulated at a fixed rate per barrel of oil produced) may also be under-funded. Section 403 would establish a revolving fund with a $50 million cap at any one time. We believe that the majority of reclamation needs are concentrated at the end of the life of the field. It is our view that $50 million would be inadequate to provide the level of reclamation likely to be required at that time. Even if the cap were removed so the fund would continue to accumulate, the fund would still generate far too little for large-scale reclamation (only $160 million would be generated, assuming the mean case of 3.2 billion barrels of recoverable oil).

Finally, we are concerned about S. 406 subseciton 403(a) providing that the holder of the Trans-Alaska Pipeline right-of-way (currently Alyeska, Inc., a consortium of the private owner/operator companies of the existing Prudhoe Bay area oil fields) would administer the Reclamation Fund. Prudent consideration of the public interest requires that final word on the need for and appropriateness of reclamation rest with the permit-issuing agency and not with the permit holder, who has a financial interest at stake. We recommend that the Department of the Interior administer the Reclamation Fund. For the North Slope in particular, widely differing views on the need, methods, and standards for reclamation have been taken by industry and regulatory agencies. Nevertheless, progress has been made in the form of controlled research into the potential success of various restoration methods.

Amendment 5 would strengthen and improve many aspects of S. 406. However, the mitigation plan provision of amendment 5 section 301(b)(2) should be reworded to be consistent with NEPA and existing Federal agency mitigation policies (including that of the U.S. Fish and Wildlife Service) and to read as follows: "(2) a mitigation plan be implemented to avoid, minimize, and compensate (in that order and to the extent practicable) any significant adverse effect assessed under paragraph (1) of this subsection." We also recommend that development of any aspect of the mitigation plan occur in consultation with the agency or agencies having jurisdiction over that aspect of the plan (e.g., EPA and the Corps of Engineers should be consulted before approving plans for mitigation of effects on wetlands).

The amendment 5 provision (paragraph 302(b)(1)) for adoption of the mitigation measures identified in the final LEIS for the 1002 Area is positive. It should be noted, however, that these measures, by thenselves, may be inadequate to avoid significant adverse effects.

EPA recommends rewording amendment 5 paragraph 302(b)(2) to be consistent with the above comments regarding the NEPA standard: "(2) seasonal limitations on exploration, development, and related activities, where feasible, to minimize adverse environmental

effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning, and migration."

In amendment 5, paragraph 302(b)(6) we recommend inserting in line 18 of the provision after "equipment" the phrase "not required to be removed under any other authorities or permits."

In amendment 5, paragraph 302(b)(11) should be revised to read: "(11) the protection of wetlands, springs, streams and river systems, other natural surface drainage patterns, and riparian habitats in accordance with Federal Water Pollution Control Act requirements; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;"

EPA recommends that the following be added to the end of paragraph 302(b)(21): ", or as required by other agencies in authorizations or permits for which they have jurisdiction."

Subsection 207(e) of S. 406 should be amended by inserting after "Secretary" the phrase ", in consultation with affected Federal and State agencies,".

Section 214(g) of S. 406 addresses removal costs and liability for damages resulting from pollution of the Coastal Plain from discharges of oil or hazardous or toxic substances. EPA recommends that the term "Coastal Plain" be replaced by "Coastal Plain or adjacent State waters."

ADDITIONAL VIEWS OF SENATORS DOMENICI AND NICKLES

We strongly support the Committee's efforts to gain enactment of a bill authorizing leasing in the Alaska National Wildlife Refuge (ANWR). We commend the Committee's Leadership for acting quickly to produce a bill that will bring about this result.

This bill is vital to our national security. In 1988, U.S. oil production fell to its lowest level in 24 years imports grew to their highest level since 1980. Largely as a result of the congressional decision to allow the development of Prudhoe Bay, Alaska now represents one-fourth of our domestic crude oil production. This bill provides for the development of another potentially huge oil field, but assures that leasing and production will be done in an environmentally-sound manner.

Viewing the heavy resistance to tax increases or large reductions in federal spending, ANWR offers a golden opportunity to make a relatively large, painless, and long-term reduction in the federal budget deficit. The Administration estimates that ANWR could produce $2.1 billion in lease bonuses in FY 1990 and proposes that all ANWR receipts be devoted entirely to deficit reduction.

While we cannot support the Administration's proposal in its entirety, we think it is a mistake to devote only 10 percent of ANWR receipts for deficit reduction, We are particularly concerned about the provisions in the bill that would divert such a large percentage of the receipts for a number of new permanent appropriatoins, outside the annual control of Congress. A recent increase in interest rates is one of many reasons why we need to allocate more to reduce the deficit.

PETE V. DOMENICI.
DON NICKLES.

ADDITIONAL VIEWS OF SENATOR MURKOWSKI

I strongly support the Committee's action in reporting legislation to authorize oil and gas leasing on the coastal plain of the Arctic National Wildlife Refuge. I do have serious reservations, however, about three particular provisions of this legislation.

The revenue distribution section proposes to divide all revenues from oil and gas leasing on the coastal plain equally between the State of Alaska and federal government. In my view, this provision violates the "compact" which was created between the State of Alaska and the United States when Alaska joined the union.

The Alaska Statehood Act amended the Mineral Lands Leasing Act to ensure that Alaska received 90 percent of the revenues from mineral leases on federal lands in Alaska. Legislative history of the Alaska Statehood Act indicates that the 90 percent revenue share was an critical component of that legislation. It was certainly an important factor to the citizens of Alaska when they voted to become the 49th state under the provisions of the Statehood Act.

In the current legislation, this Committee is proposing to modify that revenue sharing provision without the consent of the people of Alaska. This unilateral modification violates the letter and spirit of the Alaska Statehood Act.

Perhaps unilateral modification of the terms of statehood would be more acceptable to the citizens of Alaska if the State were permitted to seek judicial review of that action. Yet, this bill even denies the State that fundamental right. The non-severability clause of the bill forces the State to choose between seeking judicial review of a serious challenge to its sovereignty as a state and pursuing economic development opportunities for its citizens.

The non-severability clause has other unwise policy consequences as well. It gives the revenues from oil and gas leasing an unparalleled position with respect to the reasons for authorizing oil and gas leasing. In effect, this clause says that the only reason for oil and gas leasing in ANWR is to provide the federal government with 50 percent ot the revenues. I do not believe that is an accurate representation of the Committee's views on the legislation.

The non-severability clause also grants to the State of Alaska or any individual with standing to sue the power to decide whether the federal judiciary will have an opportunity to overturn an act of Congress. Even if the State choose to avoid the potential dire consequences of judicial review, it has no guarantee that an individual Alaskan opposed to oil leasing on the coastal plain will not challenge the revenue sharing provision in court and prevail. In that event, the entire leasing bill becomes void and opponents of leasing have accomplished in the judiciary what they could not accomplish in the Congress.

I am also very concerned about the oil export provision of this legislation. Any crude oil produced on the coastal plain of ANWR

will be subject to at least two existing prohibitions on the export of Alaskan crude oil. Enacting an unnecessary additional prohibition amounts to nothing more than flaunting of political power.

FRANK H. MURKOWSKI.

MINORITY VIEWS OF SENATORS WIRTH, BUMPERS, AND BRADLEY

This legislation authorizes the Secretary of the Interior to offer for lease the entire coastal plain of the Arctic National Wildlife Refuge. We oppose this legislation because, in our view, the decision of whether the coastal plain should be made available for oil and gas exploration and development should be taken only within the framework of a cohesive, progressive national energy policy.

During the Committee's consideration of this matter, we supported an amendment that would have deferred the decision on leasing until the Secretary of the Interior had completed a thorough study of: (1) the nation's demand for crude oil, (2) the alternatives for meeting the nation's demand for liquid fuels, including the potential for conservation, increased efficiency, and enhanced oil recovery, and (3) the comparative costs of these and other alternatives for securing the Nation's energy future.

We believe that such a study would provide a sound framework and context for making a decision on leasing the coastal plain—a decision that would irrevocably change the character of what is today a uniquely important component of the national wildlife refuge system. Unfortunately, our amendment was defeated.

The Committee did adopt an amendment that calls for the preparation of an energy study that would achieve some, but by no means all, of the objectives set out by our amendment. But the Committee bill clears away all legal obstacles to oil and gas development on the coastal plain before Congress receives the results of this study.

In our view, the legislation approved by the Committee places the cart before the horse. We believe that Congress should make a decision on leasing the coastal plain after receiving from the Secretary a report that provides the vital information that is needed to make an informed decision on this very important issue. For that reason, we oppose the legislation approved by the Committee and dissent from the views embodied by the Committee's report.

THE NATION'S CRUDE OIL RESERVES

Over the past several years, the Energy and Natural Resources Committee had held a number of hearings on the state of the nation's energy security. Much of what we heard is cause for concern. There was general agreement that United States production of crude oil has declined since 1985, and that stripper well production was particularly hard hit by the precipitate decline in crude oil prices that occurred in 1986. There also was general agreement that consumption of crude oil in the United States has increased as prices have fallen. And finally, one of the results of these two di-

verging trends has been an increase in this country's reliance on imported oil.

However, other elements of the United States' crude oil production outlook have not received as much attention as they should. Most important is the fact that in much of the United States, oil and gas exploration is a mature stage: the nation has been extensively drilled, and finding and lifting costs are high, especially compared to the costs of exploration and development in the Persian Gulf producing nations. See generally, United States Department of Energy, *Energy Security/A Report to the President of the United States* at 50–53 (March 1987). A report prepared by the Congressional Research Service points out that this country's—

> oil reserves will decline at a record pace. Our reserves to production ratio of 9/1 is dwarfed by the 50+/1 ratios of the Middle East. Despite favorable prices prior to 1986, we have not shown since 1979 that we can return to the peak of 1971, and the North Slope production which rescued us for awhile is now about to decline.

J. Schanz, Jr., *The Outlook for U.S. Energy Supplies and the Arctic National Wildlife Refuge Decision* at 11–12 (Congressional Research Service) (January 15, 1988). See also Office of Technology Assessment, *U.S. Oil Production/The Effect of Low Oil Prices* at 13–14.

Other experts in the energy field paint a similar picture for future crude oil production in the United States. For example, the Department of Energy projected that total United States petroleum production will decline from 11.20 million barrels/day in 1985 to approximately 7.68 million barrels/day in the year 2000 (assuming a world oil price of $32.87/barrel in the year 2000). Energy Information Service, *Annual Energy Outlook 1986* at 37 (released for printing Feb. 11, 1987). A range of petroleum production forecasts collected by the American Petroleum Institute painted an even grimmer picture: the forecasts for production in the year 2000 ranged from 3.2 million barrels/day to 6.2 million barrels/day. (It is unclear from the text of the API report whether those estimates included production of natural gas liquids, which were included in the EIA projections). American Petroleum Institute, *Domestic Petroleum Production and National Security* at II–3 (Dec. 30, 1986).

Of course, none of the currently available projections of either United States oil production or oil consumption are ineluctable. There exist a wide range of policy actions that could be taken on either the supply side or the demand side, or both, to enhance the United States's energy future—although prudence suggests an intensive commitment to reducing demand and developing alternatives to crude oil. But one of our principal objections to the Committee-approved legislation is that it makes a major, irrevocable commitment to expanding supply from a region of very high economic and enviornmental costs without examining the potential costs and advantages of alternatives to this course of action.

In the past, this nation has looked to its own abundant energy resources, and particularly those on its public lands, as the source from which to meet our energy needs. However, it is becoming quite clear from our knowledge of world geology and the economics

of world oil trade that the simple response of opening up new areas of public lands to oil exploration and development is no longer sufficient to meet this nation's need for liquid fuels, or even to reverse our growing level of imports.

That is why we feel it is critically important to examine this proposal in the context of alternatives affecting both supply and demand. A study of our alternatives, of their relative contributions to our energy supply, and of their economic and environmental costs, is needed to break the reflex to respond to growing demand solely by providing additional supplies such as may be found in the coastal plain, and lead us to formulate an effective overall strategy.

Clearly, new supplies will be a part of that strategy. Some of that needs to be supplied from development of domestic petroleum fields. While there is disagreement about whether the major source of new reserves will be the discovery of large new oilfields or the aggregation of many modest increments of reserves gained by drilling new wells in oil fields, improving enhanced oil recovery techniques, and exploring for small fields in familiar producing territories, in recent history the bulk of our reserves additions have come from the latter.

In addition, we know that we can displace the use of oil with domestically produced alternative fuels such as methanol, ethanol, and natural gas.

And clearly, finding ways to reduce our demand for liquid fuels must be part of any reasonable solution. The need for action on this front has become even more clear as the last two years have seen the leveling off—and perhaps even the reversal—of what had been 15 years of continuous improvement in the efficiency with which the United States uses energy.

The energy study of such alternative which we supported as a predicate to a leasing decision would not have to be started from scratch. Much already is known about them. However, no one has yet comprehensively studied the relative costs and advantages of these alternatives compared to the costs of exploring for new reserves in environmentally sensitive regions such as the north slope of the Arctic.

For example, we know that enhanced oil recovery and increased efficiency in a broad array of energy sectors could make very important contributions to the nation's energy security. But instead of taking a comprehensive look at those alternatives, the Committee-approved legislation proposes only to authorize leasing in one of the nation's most spectacular national wildlife refuges. We do not believe that leasing the coastal plain should be the first resort in meeting our national energy needs—or that it should be made without a clear road map for enhancing the nation's energy security.

Moreover, we believe it is important to remember that oil exploration on the coastal plain may not be successful. Throughout the debate, many advocates of leasing emphasized that the Department of the Interior's mean estimate of the conditional economically recoverable reserves in the coastal plain is 3.2 billion barrels. However, it is equally important to note that conditional economically recoverable oil estimates do not account for the considerable risk that no commercial-size deposits will be found in the area. The De-

partment of Interior's report on the coastal plain estimated that chances were 4 out of 5 that no economically recoverable oil would be discovered on that coastal plain.

As the Office of Technology Assessment explained,

> [r]isked mean * * * estimates factor in the possibility that no economically recoverable resources exist in the 1002 area. This reduces the conditional estimates of recoverable oil in proportion to the risk that no commercially recoverable oil exists in the area. In the case of ANWR, 3.2 billion barrels of economically recoverable oil is reduced by 80 per cent (the probability that no commercial discoveries of oil will occur in the 1002 area) *to determine the risked mean estimate of about 640 million barrels of oil.*

Office of Technology Assessment, *U.S. Oil Production/The Effect of Low Oil Prices at 84 (Sept. 1987) (emphasis added).*

WHAT MIGHT A STUDY OF ALTERNATIVES TELL US

When the Organization of Petroleum Exporting Countries instituted an embargo on exports to the United States in 1974, the new car fleet in this country was getting an average of 12.9 miles/gallon. In response to the embargo, Congress passed the Energy Policy and Conservation Act, which mandated a progressive increase in the average fuel economy of new car fleets. By 1985, new cars were required to achieve an average of 27.5 miles/gallon—a dramatic improvement over the 1974 average performance, but by no means the technological limit in fuel performance.

In October 1985, the Reagan Administration rolled the standard back to 26 miles/gallon over the strenuous objections of the Chrysler Corporation, which had invested heavily in meeting the Corporate Average Fuel Economy Standards (CAFE). For model year 1989, the import automobile fleet averages 30.7 miles/gallon, well above the original goal of 27.5 miles/gallon. However, the domestic fleet, led by Ford and General Motors, was well behind at an average of 26.9 miles/gallon.

Even though currently stalled at an average of 26 miles/gallon, the CAFE standards have been an extraordinary success. If the car fleet, which currently averages approximately 18 miles/gallon, is entirely replaced by cars that meet an average of 27.5 miles/gallon, the United States will be saving 900 million barrels of oil every year.

Nevertheless, there is considerable room for improvement. And the transportation sector's near-total reliance on oil makes a compelling case for dramatic improvements in fuel efficiency, since this part of the economy likely would suffer first and traumatically during any future interruption in energy supplies. For example, in 1985, a year that is roughly representative of the mid-1980s, the transportation sector used nearly 65 per cent of all of the oil used in the United States. That was equivalent to thirty times that year's imports from Persian Gulf producing countries, and was equivalent to 7.6 times the United States's total net petroleum imports from all exporting countries.

Conversely, if we were to require that new cars and light trucks sold after 1993 meet an average of 30 miles per gallon, this country

could save 11.4 billion barrels of oil by the year 2030 (the estimated end of production from the coastal plain if 3.2 billion barrels of recoverable reserves were discovered there). If we were to raise the standard to 40 miles/gallon—a standard that is certainly achievable—we would save 30.5 billion barrels of oil by the year 2030: ten times the mean conditionally recoverable resource estimate for the coastal plain.

Without question, there are very substantial opportunities in the transportation sector for reducing oil consumption, and the quantities of oil that could be saved dwarf the amount of oil that may be found in the coastal plain. Figure 1 graphically demonstrates that a tougher CAFE standard would make a far greater contribution to the nation's energy security than would even a discovery of 3.2 billion barrels of recoverable reserves in the coastal plain. Nevertheless, in a speech delivered on January 27, 1988, Secretary of Transportation James Burnley called for the total repeal of automobile efficiency standards, rather than a new commitment to efficiency improvements in the transportation sector. And the Department of Energy under Secretary Herrington concluded that the CAFE standards have "outlived their usefulness." United States Department of Energy, *Energy Security/A Report to the President of the United States* at 108 (March 1987).

What attitude the Bush Administration will take toward CAFE standards is not known. The same could be said of their attitude toward other alternatives--including those which involve increasing domestic petroleum production.

Enhanced oil recovery (EOR) is one such option that offers great promise but which has not received adequate research funding within the Department of Energy's budget over the past several years. The Department of Energy itself has concluded that EOR "is one of the least-cost and most timely options for slowing or reversing the decline in domestic reserves and production." United States Department of Energy, *Federal Enhanced Oil Recovery Research: Increased Understanding of the 300-Billion-Barrel U.S. Residual Oil Resource and the Technologies to Produce It* at 1 (Oct. 1985).

This report pointed out that the National Petroleum Council has estimated "14.5 to 34 billion barrels of residual oil to be producible through processes that can be specified today." *Id.* at 12. EOR clearly offers great promise for maintaining United States oil production as we make the inevitable transition to other liquid fuels.

This energy study that our amendment would have mandated would have given the Congress, the oil industry, and the American public a much clearer picture of how EOR, stronger CAFE standards, and other measures compare to the total social costs of exploring and developing the coastal plain. Again, we believe strongly that the Congress should have such information before making an irrevocable decision on industrial development in that sensitive and enormously valuable unit of the wildlife refuge system.

Finally, we feel compelled to point out that alternative energy sources should be an integral part of this nation's energy policy for the future, but that the Reagan Administration consistently sought to reduce the federal commitment to research and development of alternative energy sources.

For example, for fiscal year 1989 President Reagan recommend a 17 percent reduction in funding for solar and renewable energy research and development—a funding level that would have culminated an 80 percent reduction in federal funding since fiscal year 1982. Similarly, the past Administration proposed a nearly 50 percent reduction in funding for fossil fuel energy research and development in fiscal year 1989. And this Reagan Administration consistently recommended dramatic cuts in funding for energy conservation research and development: their proposal for fiscal year 1989 would have reduced the program by nearly 45 percent, and would have resulted in a 70 percent reduction in federal support since fiscal year 1981. In fact, virtually every federal program of support for energy research and development has been significantly cut since fiscal year 1981.

We have serious doubts about the wisdom of committing the United States to oil exploration and development in a region of the country where exploration and development costs will be very high, when on the other hand federal policy for the past eight years was appeared to have been committed to reducing or eliminating federal support from alternative fuels. Our doubts are only intensified when we consider that the federal investment in renewable energy systems appears to be far less costly than development of fragile Arctic ecosystems:

> The energy production, through 1994, from renewable energy systems coming on line in the 1975–1984 period is estimated to be 4.2 billion BOE [barrels of oil equivalent] (displacement of conventional energy requirement). This data implies [sic] a federal investment equivalent of approximately $1.43 per renewable energy BOE.

United States Department of Energy (Office of Renewable Energy), *Renewable Energy Profile 1975–1984* at 9 (Feb. 1985).

A DIFFERENT APPROACH—AND A BETTER ONE

We believe that this recitation of facts paints a compelling picture. The fundamental premise of the amendment that we supported is that neither the Department of Interior or the Department of Energy have provided the Congress with the information that we need to make a reasoned decision on whether the coastal plain should be leased. We believe that such a decision appropriately should be made within the framework of a national energy report that explains not only what our nation's future demand for crude oil will be, but which also examines the full range of alternatives for meeting that demand.

We must emphasize that the amendment that we supported in the Committee did not close the coastal plain to development. It would give Congress the opportunity to make a careful decision based on all of the facts. It would also very likely provide the impetus for enactment of a wide array of measures—ranging from a renewed commitment to automobile fuel efficiency, to a national commitment to enhanced oil recovery, and to a rededication to energy alternatives including methanol, natural gas, ethanol, and other sources—that make eminent sense in pursuing the goal of energy security to which all of us subscribe.

The Committee's approach of leasing the coastal plain, in isolation from other components of what we think should be included in a rational energy policy, does not make sense to us. That is why we opposed it during the Committee's deliberations. And that is why we will oppose it on the floor of the Senate.

TIMOTHY E. WIRTH.
DALE BUMPERS.
BILL BRADLEY.

ENERGY SECURITY OPTIONS:
ANWR VERSUS IMPROVED MILEAGE STANDARDS

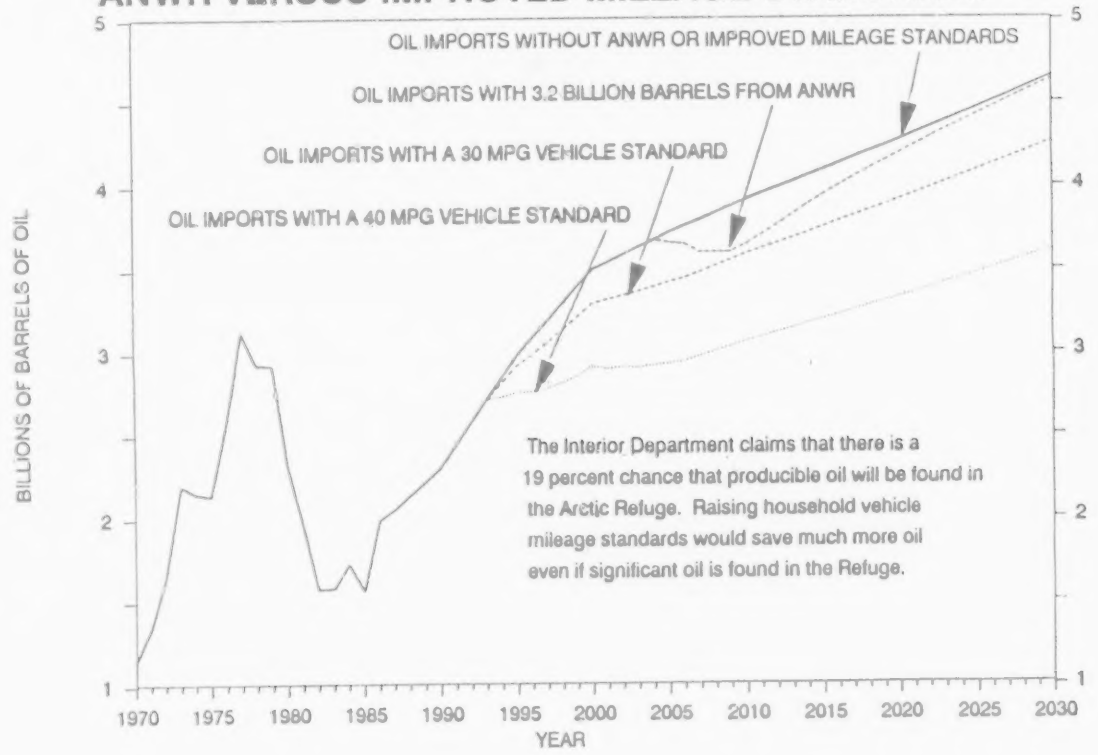

FIGURE 1

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the measure, as reported.

APPENDIX

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, November 4, 1987.

M-36957.
CLC.SO.0001.
Memorandum to: Secretary.
From: Solicitor.
Subject: Division of Receipts from Oil and Gas Development from the Arctic National Wildlife Refuge.

You have asked whether the Alaska Statehood Act (ASA), Pub. L. 85-508, 72 Stat. 339 (1958), in any way limits Congress' ability to enact a revenue distribution scheme for oil and gas revenues from new leases in federal wildlife refuges that is different from the revenue distribution scheme set out in the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 181. Your question refers specifically to the Arctic National Wildlife Refuge (ANWR). The MLA formula provides for the distribution to Alaska (the State) of 90 percent of revenues received by the United States from oil and gas leasing on public lands within the State. For the reasons discussed below, we conclude that the ASA in no way restricts Congress to the distribution scheme set out in the MLA when it enacts legislation to provide for distribution of revenues from new mineral leases in federal wildlife refuges.

BACKGROUND

At issue is the authority of Congress to determine the distribution of revenues from oil and gas leases on public lands in Alaska, and, specifically, from lands that are part of the National Wildlife Refuge System. At present, a distinction is made between revenues from acquired lands and those from reserved public domain refuge lands. Federal oil and gas revenues from acquired lands within refuges are distributed according to a schedule set out in the Wildlife Refuge Revenue Sharing Act (WRRSA)[1] which allots 25 percent to the county in which the refuge is located and 75 percent to the Migratory Bird Conservation Fund, while federal revenues from reserved public domain lands within refuges are distributed in accordance with the Mineral Leasing Act,[2] which allots 50 percent to the states, except Alaska, in which the refuge is located, 40 percent to the Reclamation Fund, and 10 percent to miscellaneous receipts

[1] Section 401, 16 U.S.C. § 715s(c); *Watt* v. *Alaska*, 451 U.S. 259 (1981).
[2] Section 35, as amended, 30 U.S.C. § 191.

in the U.S. Treasury. Alaska receives 90 percent of MLA lease revenues derived from within the State. The remaining 10 percent goes to miscellaneous receipts in the U.S. Treasury. As the refuge currently at issue, ANWR, is on reserved public domain land, we will focus on the provisions of the Mineral Leasing Act in analyzing the issue presented to us.

The distribution system set out in the Mineral Leasing Act was extended to Alaska in section 28(b) of the Alaska Statehood Act, as follows:

> (b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, shale, gas and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

After amendment, section 35 of the Mineral Leasing Act read as follows:

> All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title shall be paid into the Treasury of the United States; *37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located;* said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, *and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided,* That all moneys which may accrue to the United States under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 524 of Title 34. All moneys received under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. (Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85–88, § 2, 71 Stat. 282; July 7,

1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.) [3] (Emphasis added.)

The United States Senate is presently considering a bill, S. 735, that would change the distribution system as applied to revenues derived from oil and gas leasing within units of the National Wildlife Refuge System. Specifically, the bill provides that 50 percent of such revenues would go to the state, 25 percent to the Land and Water Conservation Fund and 25 percent to the federal government. If the bill passes, it will apply to all leases in any wildlife refuge issued after enactment, but it is expected that the refuge most immediately affected will be ANWR.

In recent testimony on S. 735 before the Senate Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests, and in documents submitted to us in connection with our consideration of this issue, representatives of the State of Alaska have argued that Congress cannot legally enact a revenue distribution formula that provides Alaska less than 90 percent of mineral leasing revenues from the leasing of public lands in Alaska without the consent of the State.[4]

ANALYSIS

The enactment of legislation establishing a distribution formula for federal revenues obtained from the leasing of federally owned minerals falls within the power of Congress enumerated in the Property Clause of the Constitution:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. * * *

U.S. Constitution, art. IV, § 3, cl. 2.

The Mineral Leasing Act of 1920 is an example of the use of this power. Once having enacted such a system of mineral leasing, Congress has the authority under the Property Clause to change the distribution schedule set up with regard to the revenues resulting from those leases. As indicated in *United States* v. *Locke*, 471 U.S.S. 84, 104 (1985), "[t]he United States, as owner of the underlying fee title to the public domain, retains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired." In the *Locke* case, the Supreme Court was called upon to determine the constitutionality of a legislative provision that subjected holders of unpatented mining claims to forfeiture of those claims if they failed to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701. In holding the regulation to be constitutional, the Supreme Court indicated that "[c]laimants thus must take

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[3] The net effect of the amendment was to accord Alaska both the 37½ percent share enjoyed by all other states and the 52½ percent that would otherwise have gone to the Reclamation Fund, for a total of 90 percent. A succession of subsequent amendments to section 35, most recently in section 104(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1701, has changed these figures to 50 percent for states and 40 percent for the Reclamation Fund in states other than Alaska, and 90 percent for Alaska, to be distributed on a monthly basis.

[4] Alaska also raises a number of political and policy issues arising from the historic relationship between the federal government and the states and, specifically, between the federal government and the new state of Alaska. We do not purport to address those political and policy issues in this memorandum.

their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests." [The Court compared this holding to *Energy Resources Group, Inc.* v. *Kansas Power and Light Co.*, 459 U.S. 400 (1983), dealing with the impairment of contractual relations.] *Id.* at 105.[5]

Against this background, Alaska must sustain a heavy burden to show that Congress lacks the authority under the Property Clause to change the distribution system for federal revenues derived from oil and gas leases on federal lands, including wildlife refuges.

Alaska's primary [6] argument against Congress' power to enact a distribution formula for receipts from the lease of refugee minerals that is defferent from the formula set out in the MLA is that the MLA distribution scheme was incorporated into and made a part of the compact of statehood. According to that argument, the MLA was so incorporated by virtue of the inclusion in the Alaska Statehood Act of a section amending the MLA to apply it to Alaska. The State argues that Congress made the distribution formula part of the compact as a vehicle granting Alaska a permanent property interest in mineral revenues from public lands.[7] According to this ar-

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[5] The people of Alaska implicitly acknowledged the powers reserved to Congress under the Property Clause when they agreed in the Alaska State Constitution that:

"The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation." (Alaska Constitution, art. 12, § 12.)

[6] Alaska also argues taht a change in the distribution, such as that proposed in S. 735, would result in the State being treated differently than other states. Specifically, Alaska argues that it is the only state that has a refuge producing oil and gas revenues on reserved lands and, therefore, is the only state that will be impacted by a provision changing the distribution formula for reserved wildlife refuges. Although this appears to be primarily a policy issue, Alaska does suggest that the equal footing doctrine may be implicated by such unequal treatment. However, after reviewing this matter, we do not believe that it raises substantial legal questions. Factually, the proposed law would apply to *all* new leases on *all* wildlife refuges. As a factual matter, it is not clear that it would have an unequal impact in the long run. As a legal matter, even if there were an unequal impact, this impact would not constitute a violation of the equal footing doctrine. In *Nevada* v. *U.S.*, 512 F. Supp. 166 (D. Nev. 1981), a case in which the State of Nevada challenged a moratorium on the disposal of public lands under the equal footing doctrine, the court accurately summarized this doctrine as follows:

"Federal regulation which is otherwise valid is not a violation of the 'equal footing' doctrine merely because its impact may differ between various states because of geographic or economic reasons. *Island Airlines, Inc.* v. *CAB*, 363 F. 2d 120 (9th Cir 1966). The doctrine applies only to political rights and sovereignty; it does not cover economic matters, for there never has been equality among the states in that sense. *U.S.* v. *Texas*, 339 U.S. 707 (1950). Said case points out that, when they entered the Union, some states contained large tracts of land belonging to the federal government, whereas others had none. 'The requirement of equal footing was designed not to wipe out these diversities but to create parity as respects political standing and sovereignty.' *Id.*, at 716. Accordingly, Congress may cede property to one state without a corresponding cession to all states. * * * the equal footing doctrine does not affect Congress' power to dispose of federal property. * * *"

[7] In documents submitted to us, the State cites several instances in the legislative history of the ASA in which Members of Congress expressed an intent to provide Alaska with sufficient revenues to function as a state, and several other instances in which congressmen or reports cited the 90/10 distribution system. However, these expressions of intent do not answer the question of whether the 90/10 distribution was to be a permanent grant of a property interest and whether, by setting out such a formula in 1958, Congress sought to terminate its Property Clause powers with regard to federal mineral revenues from federal lands forever. Our analysis of the statutes and judicial precedent compel a negative answer to both questions that is not changed by the citation suggesting a general intention to provide the new state with revenue.

gument, as a grant made to the State in the compact of statehood, the property interest may not be changed. Thus the State argues that the distribution system comes within the narrow confines of *Beecher* v. *Wetherby,* 95 U.S. (5 Otto) 517 (1877), a case holding that a grant made in a statehood act is an "unalterable condition of the admission [of the State into the Union], binding upon the United States."

We do not dispute that a *grant made in a statehood act* may be unalterable. However, we believe that in this instance, Alaska paints too broadly the compact of statehood. Rather than being a grant incorporated into that compact, the distribution system applied to Alaska in section 28(b) is nothing more than an exercise of Congress' powers under the Property Clause to dispose of and make needful rules for the public's property.

Judicial precedent instructs that not every provision in a statehood act is an irrevocable grant to the state. Thus, we must look carefully at the provisions of the ASA to ascertain what must be included within the terms of its statehood compact with the United States. The Supreme Court has had occasion to consider the different kinds of authority Congress may exercise in passing a statehood act and what provisions of a statehood act may properly be considered part of the compact entered into at statehood. In *Coyle* v. *Oklahoma,* 221 U.S. 559 (1911), the Court held that certain conditions contained in Oklahoma's statehood act were not part of the compact of statehood. The Supreme Court pointed out that in admitting a new state into the Union, Congress may simultaneously exercise other of its powers, such as the power to regulate commerce or the power "to make all needful rules and regulations respecting the territory or other property of the United States" (citing *Pollard's Lessee* v. *Hagan,* How. 212 (1845)). The Supreme Court concluded that provisions contained in a statehood act that are enacted under one of these other powers, "cannot operate as a contract between the parties, but are binding as law." *Coyle,* at 571. The Court then went on to say:

> It may well happen that Congress should embrace in an enactment introducing a new state into the Union legislation intended as a regulation of commerce among the states, or with Indian tribes situated within the limits of such new state, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement or compact with the proposed new state, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject. * * *

Id. at 574.[8]

[8] *See also, Nevada* v. *U.S.,* 512 F. Supp. at 171-172: "Regulations dealing with the care and disposition of public lands within the boundaries of a new state may properly be embraced in its act of admission, as within the sphere of the plain power of Congress." (Citing, *U.S.* v. *Sandoval,* 231 U.S. 28 (1913).

Section 28 of the ASA is just such an enactment. It is based on Congress' power under the Property Clause to administer federal property interests. The MLA itself was similarly based, and the amendment to it contained in the ASA cannot be used to alter its origins or elevate it to compact status so that it cannot be amended.

Section 28 of the ASA, on its face, does not purport to be either a part of the compact between the United States and the State of Alaska or a permanent grant of mineral revenues to the State. In fact, section 28 did nothing more than amend a statute that had already been in existence for over 30 years before the ASA was enacted and had long been applied to federal lands in all other states.[9] Further, section 28 is but one of several sections added at the end of the ASA to amend existing law to apply it specifically to Alaska. Section 28(b) in particular was a necessary and timely expedient because Congress wanted to extend to and adapt for Alaska the revenue distribution system already in place in other states.

Further, section 28(b) is very limited in that it is applicable only to lands leased under the MLA, not to other federally owned lands leased under other authority. For example, section 35 of the MLA gave Alaska no share of receipts from the naval petroleum reserves, and Naval Petroleum Reserve No. 4 (now NPR-A), constituting roughly 23 million acres in Alaska, was separately addressed in Section 11 of the ASA. This separate treatment indicates that Congress did not intend, as argued by the State, that the MLA be a vehicle for an irrevocable 90 percent interest in revenues from all federal mineral lands.[10] This point is further supported by a 1981 Supreme Court decision in which the Court found that a 1964 amendment to the Wildlife Refuge Revenue Sharing Act, which included mineral revenues within its 75/25 distribution schedule, was properly applied to oil and gas leasing revenues from wildlife refuges on acquired federal lands in Alaska. *Watt* v. *Alaska*, 451 U.S. 259 (1981).[11]

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[9] All of the contiguous lower 48 states had already been admitted to the Union when the MLA was passed in 1920. The MLA was not "incorporated" into the statehood act of any other state.

[10] The State's argument implies that 90 percent of MLA revenues goes to all states, not just Alaska. This argument appears to be based on an interpretation of the MLA whereby the 40 percent of MLA revenues which is earmarked for the Reclamation Fund ultimately is returned to the states in the form of reclamation projects. This argument has several problems. The assertion that the 40 percent of MLA receipts from states other than Alaska is returned to the generating states is illusory. In fact, any such moneys that are returned to the states arrive there only through an express appropriation from Congress after competing with other appropriations proposals, and there is absolutely no guarantee that such moneys as are appropriated will be proportionately returned to the states from which they were generated. The 90 percent provided to Alaska, however, is distributed directly to the State, to be disposed of as the state legislature directs. To the extent Alaska argues that it has been treated the same as other states in receiving the 90 percent share of MLA revenues it implicitly admits that equal treatment would allow Congress to change the MLA formula for Alaska, because Congress clearly has the power to amend the MLA to affect the royalty shares of the other states. *New Mexico* v. *U.S.*, 11 *Cl. Ct. 429 (1986); affirmed, — F.2d —, 87-1210 (1987).*

[11] The case cited in the text focused on section 401 of the Revenue Sharing Act, 16 U.S.C. § 715s(c), which after the 1964 amendment provided that 25 percent of the receipts, including mineral receipts, generated by a refuge would go to the county in which the refuge was located and 75 percent to the Migratory Bird Conservation Fund. The Kenai Borough (the county in which the Kenai Moose Range is located), and the State of Alaska, each filed suit to challenge the federal interpretation that this formula applied to oil and gas revenues generated from the refuge. The U.S. District Court, District of Alaska, and the Ninth Circuit Court of Appeals each found in favor of the State of Alaska, that is, that section 35 of the MLA and not section 401 of the WRRSA, controlled the distribution of receipts from Kenai Moose Range. The Supreme

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Further, section 28 of the ASA did not purport to grant Alaska a 90 percent royalty interest in the minerals themselves. Rather, the section amended an entirely separate statute, the MLA, which itself does not grant the State any interest in minerals, but merely prescribes a formula for the distribution of certain federal oil and gas revenues. We have previously considered the issue of what interest states have in federal oil and gas under the MLA and concluded that they have no economic interest in the oil in place. As stated in Solicitor's Opinion M–36929, 87 I.D. 661, at 664, 665 (1980):

> States have no pecuniary or legal interest in federally owned oil until that oil is leased, extracted and the royalty payments are made to the federal government. In sum, sec. 35 simply provides for the disposition of federal royalty revenue; it does not confer on states an economic interest in the oil in place. * * *

Therefore, under the amendment of the MLA contained in the ASA, the State receives only *a periodic distribution of 90 percent of the revenues produced* each year from the leasing and production of minerals under the MLA. Alaska receives no revenues under the MLA until such revenues are produced, and more importantly, receives its MLA royalty distribution only by virtue of the provisions of the MLA, not by virtue of the ASA.[12]

Our conclusion must be, then, that Congress was using the amendment to the MLA contained in section 28 not as a vehicle for granting the state a perpetual 90 percent interest in federal minerils in Alaska, but rather as an exercise of its authority under the Property Clause to dispose of and make needful rules for certain federal property, in this case, to set out the distribution scheme applicable to minerals leased under the MLA.

Our view that the MLA was not incorporated into the compact between the State and the federal goverment and that it does not amount to a permanent grant is supported by examples of cases in which Congress has exercised its Property Clause powers to amend the MLA since Alaska gained statehood to the detriment of Alaska's 90 percent interest in revenues from mineral leases. For example, on December 18, 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, *et seq.*, amending the royalty distribution ratio of the MLA to reduce the State's share of royalties and pay a portion to Alaska Native corporations. Section 9 of ANCSA, 43 U.S.C. § 1608, provided in part that a royalty of 2 per centum of the gross value of minerals and 2 per centum of all rentals and bonuses would be deducted from the mineral revenues from public lands and paid to the Alaska Native Fund. Prior to ANCSA, the standard royalty on oil and gas leases was 12.5 percent of production. This meant 1.25 percent went to the U.S. Treas-

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Court held that the 1964 amendment clearly covered oil and gas receipts, but also found that it has not been the intent of Congress to amend section 35 of the MLA. Therefore, the court ruled that the WRRSA applied to oil and gas receipts from acquired lands in wildlife refuges, but not to reserved public lands in wildlife refuges. *Watt* v. *Alaska*, 451 U.S. 259 (1981). Even though the Court distinguished between acquired lands in refuges and public domain, this decision supports the proposition that Congress is not bound by the ASA to give Alaska 90 percent of oil and gas leasing revenues from *all* federally owned land.

[12] In contrast, for example, the ASA explicitly granted Alaska 103,350,000 acres of land, which vested upon enactment.

ury, and 11.25 percent went to the State of Alaska, whereas after ANCSA these percentages were 1.05 and 9.45, respectively.

Similarly, the Crude Oil Windfall Profit Tax of 1980, Pub. L. No. 96-223, 94 Stat. 229 (1980), exacts a tax on MLA revenues prior to the application of the revenue sharing formula. *New Mexico* v. *U.S.*, 11 Cl. Ct. 429 (1986), affirmed —— F.2d ——, No. 87-1210 (1987). *See also,* Solicitor's Opinion M-36929 *supra.*

These examples clearly demonstrate Congress' continuing authority to change the distribution scheme for mineral revenues from federal lands whenever it perceives a need to do so.

CONCLUSION

For the reasons stated, we must conclude that Congress has the authority under the Property Clause of the Constitution to alter the distribution formula set out in the Mineral Leasing Act for oil and gas revenues from the Arctic National Wildlife Refuge. The State of Alaska has not met the heavy burden of persuasion with respect to the argument that those Property Clause powers were terminated by the section in the Statehood Act amending the MLA to include Alaska in the Act's revenue distribution formula. We can find no support in the Alaska Statehood Act for the proposition that the MLA was incorporated into the compact between the federal government and the State. In fact, opposite the proposition, we find other instances in which Congress has amended the MLA in a manner which adversely affected the State's interests.

RALPH W. TARR.

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